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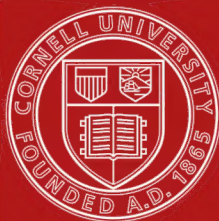
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# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XVIII

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WASHINGTON  
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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

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WILLIAM M. CALDER, NEW YORK.

CHARLES G. WASHBURN, MASSACHUSETTS.

WILLIAM C. ADAMSON, GEORGIA.

WILLIAM RICHARDSON, ALABAMA.

CHARLES L. BARTLETT, GEORGIA.

GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Tuesday, February 15, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Any gentleman, in reference to the interurban roads, may proceed.

### **STATEMENT OF MR. LEWIS S. CASS, PRESIDENT OF THE WATER- LOO, CEDAR FALLS AND NORTHERN RAILWAY, OF WATERLOO, IOWA.**

The CHAIRMAN. You wish to be heard in reference to the provision in the Townsend bill (H. R. 17536) excepting interurban railroads from the operation of the bill?

Mr. CASS. Mr. Chairman and gentlemen, I will try to take up as little of your time as possible; but first I want to go on record as saying that I am thoroughly in accord and sympathy with the interstate-commerce law as it stands and as it is proposed to be amended in so far as giving the commission the right to establish through routes, joint rates, and joint classifications are concerned. Without this right a great many communities would suffer for the want of equal and fair freight rates, as between communities located upon short lines of railroad and communities located upon trunk lines of railroad. This I regard as equally true so far as waterways are concerned, and I don't think there is any question but what it is true so far as any railroad is concerned, regardless of what the motive power may be. I know a great many different interurban railroads throughout the country—in fact, I know of no interurban railroad in the State of Iowa, of which State I am a resident, that does not do what you might term a commercial railroad business; but yet in every sense, so far as their passenger business is concerned, they are an interurban electric passenger railway, and it seems to me they are a form of railway which you propose to exclude from the right of the enforcement of joint rates and through routes with steam-connecting carriers.

Most of the electric interurban railroads that to-day have joint rates and through routes with steam carriers, with a few exceptions, would be deprived of those rates as soon as they lost the power to enforce those joint rates, and to deprive them of those joint rates would deprive a number of communities from the equal chance at their markets with the communities located in adjacent and corresponding stations upon trunk lines of railroads that are dependent

upon the market town for their produce and wares, and an equal chance to ship their grain, live stock, and so forth.

In discussing this bill with different parties—I don't know just what is intended to be covered by excluding electric interurban passenger railways from those which the commission may order rates in connection with steam roads. It may be possible that I am taking up the time of you gentlemen unnecessarily, and that I am laboring under a misapprehension as to the intention of this bill, but it is so vitally important to the property which I represent and to the properties which are known as interurban railroads throughout the State of Iowa that to withdraw from those railroads their freight traffic and their right to through routes and joint rates would work a great hardship upon a number of communities that are served only by these interurban railroads and would, I fear, reduce the earnings of these interurban roads to such a low point that it would be impossible for them to operate as independent lines.

Mr. BARTLETT. You are engaged in the business of operating interurban roads?

Mr. CASS. Yes, sir.

Mr. BARTLETT. In the northwestern country and also in the eastern part of the United States; I am familiar with that; they handle a part not only of the interurban traffic and travel, but they carry passengers and freight; also sleeping cars, do they not?

Mr. CASS. Yes, sir; there are interurban roads that are running sleeping cars for passengers, and I believe that Congressman McKinley's roads down in Illinois run sleeping cars for passengers.

Mr. BARTLETT. How about freight?

Mr. CASS. The roads in Iowa transact the same character of a general freight business as any steam railroad in the State, excepting that they are not so long and do not reach the territory or do not reach the market towns; for instance, Chicago is the market town for the State of Iowa. The roads to and from Iowa built up by the steam railroad companies were built for the purpose of giving the steam roads the longest haul, and for the purpose of making Chicago the market town. These roads built their lines up to carry the products from Chicago to the people out in Iowa, and load their cars in Iowa with grain and live stock and bring them back to Chicago. Those roads originally were built for the purpose of moving traffic in that manner. The six trunk lines which cross the State of Iowa were so far apart that the markets became hard to reach by the settlers, so the people of Iowa have invested their money in right-angle roads, or railroads running across the State at right angles, communities have been established on those short-line railroads, and in order that those communities might thrive, they had to send their products to Chicago, the market town, and they had to receive from Chicago the wares that are sold at Chicago; and in order that they might receive those in competition with the trunk lines, or the communities located upon the trunk lines of railroad, they must have substantially the same rate as the communities located upon the trunk lines. Competition enforced that condition of those rates in the early days with the six trunk lines across the State of Iowa.

Mr. ADAMSON. Mr. Cass, I am not responsible for any part of this bill, and I have not been selected to explain any of it, but my understanding is that the reason for the exception of these lines is that



some of these railroads were not equipped to assume the responsibilities of the interstate commerce law, and that therefore they were to be exempt for awhile. Now you say that they are ready for it, and wish to be included in the provisions of the bill.

Mr. CASS. I say that the Waterloo, Cedar Falls and Northern Railroad, of which I am president, is ready for it, and is equipped for it. They considered themselves as subject to the interstate commerce law for two, three, or four years past, and have but recently submitted their auditor's office to a careful search on the part of the auditors of the Interstate Commerce Commission.

The CHAIRMAN. I think perhaps it would be well for me to read to the committee the provision that you have reference to. The provision which you are discussing in the Townsend bill is found on page 18, beginning on line 20, and reads as follows:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

Of course that only refers to the establishment, I judge, of the through route.

Mr. ADAMSON. It is doubtful whether it would be held to apply to his road at all.

Mr. CASS. That is the provision; yes.

Mr. ADAMSON. I mean as to whether the exception would apply to his road at all.

Mr. STEVENS. Have you had any conferences with the Attorney-General, or with the chairman of the Interstate Commerce Commission, who is somewhat responsible for the drafting of this Townsend bill?

Mr. CASS. No, sir.

Mr. STEVENS. Do you know whether or not that provision which was read was made with reference to your line, the lines in Iowa, Ohio, Indiana, or lines in New England controlled by the New Haven Road?

Mr. CASS. I do not. I have been unable to determine why that provision was injected in the bill.

Mr. BARTLETT. So far as passenger traffic is concerned, these interurban railroads, even in New England, are in a very considerable part used by passengers in traveling from one city and State to another, are they not?

Mr. CASS. Yes, sir.

Mr. BARTLETT. A man may go from New York to Portland, Me., on one?

Mr. CASS. Almost, I believe.

Mr. BARTLETT. He certainly can go from New York to Boston.

Mr. CASS. Oh, yes.

Mr. BARTLETT. And you think that those roads, having become, as you claim them to be—and doubtless correctly—now under the general terms of the Hepburn bill, and subject to control and regulation by the Interstate Commerce Commission, and this being a bill to amend or alter or increase the powers of the Interstate Commerce Commission, that they ought not to be specially excepted by being taken out from the general term of "railroads" conducting a passenger and freight traffic?

Mr. CASS. Yes, sir; that is just what I think.

Mr. WASHBURN. Your remarks would also apply, would they not, to lines 15 to 18, inclusive, on page 26 of the bill?

Mr. CASS. I don't see where that part of the bill can materially injure the class of railroads that I represent. If it is deemed wise to permit combinations on the part of electric railroads to be formed, and to permit steam railroads to use electric railroads as holding companies in consolidating steam railroads, I don't know that we can complain; but if I was the other fellow I would want that taken out, to be frank with you about it.

Mr. STAFFORD. What are the reasons for your advocating this being eliminated if you are in an opposite position?

Mr. CASS. I don't believe that the transportation in the arteries of commerce in this country ought to be so consolidated that they will be brought into too narrow a scope of management. I don't believe that our railroads and transportation companies ought to be controlled by a few people. I think that competition is necessary for the welfare of the business of the public along lines of transportation, not on account of rates, but on account of accommodations that competitors will furnish even at the same rates. That is why I say that if I was not in the railroad business I would not want the clause to remain in the bill.

Mr. WASHBURN. Do you think that the steam railroads and the electric railroads should be kept separate and distinct as competing factors in the transportation business?

Mr. CASS. Yes, sir; as much as steam railroads should be kept separate.

Mr. WASHBURN. As a matter of public policy?

Mr. CASS. As a matter of public policy; yes. I believe that to be for the best interests of the public.

The CHAIRMAN. Mr. Cass, to take a specific case, where an electric road has been constructed paralleling a line of steam railroad to within a few miles of a station in a large city, you want the law so that the Interstate Commerce Commission shall have the power to make the steam railroad enter into a joint rate with the electric road, and yet forbid the steam railroad from acquiring that electric road. The electric road would probably become practically a feeder of the steam railroad, and would not the facilities to the public be rather enhanced if the steam railroad should acquire the electric road?

Mr. CASS. I would have to answer that question by a little further explanation, if I may make it.

The CHAIRMAN. Certainly.

Mr. CASS. Let us take as an illustration the Elgin, Aurora and Chicago Electric Railroad, which goes to the city limits of the city of Chicago, and reaches a large population in the minor cities surrounding Chicago. Now, those cities use Chicago as their market town, the principal part of the business to and from those cities is to and from Chicago. But I don't understand that it is the intention of the Interstate Commerce Commission, or of the Government—the law-making power—to attempt to regulate state rates; that is, I don't see that this bill would affect the question of joint rates in that instance. It seems to me that that would be entirely regulated by the Illinois state commission and by these Illinois rates.

The CHAIRMAN. Let us see whether it would or not. That electric road is wholly within the limits of the State of Illinois, and it would

still be within the limits of the State in order to get into the city of Chicago. Suppose they should enter into an arrangement with you in Iowa for a joint rate from the west end of Iowa to the city of Chicago, wouldn't that compel them to make an arrangement by which they could carry passengers into the city of Chicago from Iowa?

Mr. CASS. That would be true as to the passengers, but the passenger rates are principally based throughout the country upon 2 cents a mile, and with the exception of where short-line rates are made, it is not necessary that joint passenger rates be ordered; it is not necessary that the commission be given permission to order joint passenger rates.

The CHAIRMAN. But that is what we are proposing to do, to give them that authority, and that is what you are advocating.

Mr. CASS. What I am advocating is principally freight rates. The question of passenger rates is not an important question in this at all, and if I am taking up your time on a question of passenger rates entirely, then I want to apologize, because I assumed that, of course, it would cover freight rates.

Mr. ADAMSON. As to that phrase "different character," as applied to those roads—that is, between roads of a different character, if the gauge is the same, the track and the coupling apparatus can be adjusted, and the braking system can be adjusted—what is the reason that they are not nearly enough of the same character as to make this arrangement feasible?

Mr. CASS. The only reason that I can assign to that is that the State of Iowa, through its supreme court, has declared that the railroad of which I am the president is an interurban railroad, and if the Supreme Court of the United States should hold the same thing, based upon the decision of the supreme court of Iowa, then we would be shut out under this bill.

Mr. ADAMSON. But this is an exception, as between your road and railroads of a different character, meaning the steam railroads.

Mr. CASS. Yes.

Mr. ADAMSON. Now, if that class of interurban street railroads that you speak of is, by their equipment—their physical equipment—sufficiently within the character of the steam railroads, what is the reason they practically are not in the same character?

Mr. CASS. They should be, and they are, as a matter of fact.

Mr. ADAMSON. If they have the same gauge, the same adjustable coupling arrangement, the same braking arrangement, what is the reason they are not sufficiently in the same character to be coupled on?

Mr. CASS. They are; but what the courts would say, as meant by this bill, should it be left with the present wording, is another matter.

Mr. STAFFORD. What is the character of your freight equipment on interurban railroads as to the gondola cars and the box cars?

Mr. CASS. The Waterloo, Cedar Falls and Northern Railroad owns 150 cars. Seventy-five of those cars are built under the Master Car-builders' steam road specifications, are interchangeable with any railroad in the United States, and our freight equipment comes and goes to the other railroads as freely as theirs go and come to our line.

Mr. STAFFORD. Is it the practice at present to interchange cars with other railroads without the necessity of transferring shipments to the connecting railroads at the connection point?

Mr. CASS. It is, so far as interurban railroads of Iowa are concerned. The character of the interurban railroads of Illinois I have not carefully investigated, but we have a number of interurban railroads in Iowa, and all of them transact a general commercial railroad business along the same line as the steam railroads, and in addition to the general commercial business they transact an interurban passenger railroad business. But in the instance of our company, and of other companies, they transact street railroad business upon the streets of some communities.

Mr. STAFFORD. Then the railroad carriers in Iowa send their own cars of freight over your lines?

Mr. CASS. Yes, sir.

Mr. ADAMSON. Then the only feature, it appears, in which the characters are different is that, while their engines could run on your tracks, your engines could not run on theirs because they haven't the electricity?

Mr. CASS. That is the point exactly.

Mr. ADAMSON. And is that material to the question of sending cars back and forth?

Mr. CASS. Not at all.

The CHAIRMAN. How many freight cars have you on your line?

Mr. CASS. Seventy-five cars of the master carbuilders' standard, and of that 75 cars 45 of them are interchangeable freight cars in the general line of freight business; that is, they go all over the United States, and at times they are gone for as long a period as two years before they come back to our line.

The CHAIRMAN. Forty-five freight cars; is that the total number of freight cars that you have?

Mr. CASS. That is the total of freight cars that we send out on other lines. We have six steam locomotives.

The CHAIRMAN. How many miles of track have you?

Mr. CASS. We have 50 miles of track that we operate as a commercial railroad.

The CHAIRMAN. You have a little less than a freight car to a mile, then?

Mr. CASS. Yes, sir.

The CHAIRMAN. Do you think that is a fair proportion, if steam railroads were to be compelled to interchange business with you?

Mr. CASS. I think it is a greater proportion than the average small steam railroad owns.

The CHAIRMAN. Less than a freight car to a mile?

Mr. CASS. Yes, sir.

The CHAIRMAN. Have you any information upon that subject?

Mr. CASS. I have looked it up; and I might say for your information, sir, that I have just retired as an executive officer of a large steam trunk line, and that I have come in contact with that situation in connection with the interurban lines and with the small steam railroads; and I know from experience that the average electric railroad which is attempting the business of commercial railroading is better equipped in nearly every respect to serve the public than the average small steam railroad.

The CHAIRMAN. Now, how many miles of electric interurban roads are there in the United States?

Mr. CASS. I should say about 38,000.

The CHAIRMAN. How many freight cars have they?

Mr. CASS. In the United States—I couldn't say offhand; I would have to look that up. Do you mean for the interurban roads?

The CHAIRMAN. Yes.

Mr. CASS. I should say that the interurban roads have not anything like one freight car to the mile.

The CHAIRMAN. Do you suppose that they have 3,800?

Mr. CASS. No; I should think not.

The CHAIRMAN. That would be less than one in ten. Do you think it would be perfectly fair to require the steam railroads to interchange freight with the interurban roads, the steam railroads to furnish practically all of the freight cars?

Mr. CASS. I think it would be just as fair as it is to require them to interchange traffic with water transportation companies.

The CHAIRMAN. That is the question. That question is to be discussed by some other people. What I wanted to get at was your view on this particular proposition.

Mr. CASS. Yes; I believe that it would be. I believe that it is perfectly fair, and the reason it is perfectly fair is this: That for eight months every year the steam railroad companies have standing on their sidetracks idle railway equipment, box and freight equipment, that they would be very glad to push out on the electric lines and receive their per diem of 30 or 20 or 50 cents, whatever it is—it has varied three or four times in the last three or four years, and I don't remember it now, but I think it is 30 cents per diem for the cars.

The CHAIRMAN. It is a pleasure to hear you say that, because we are so used to hearing shippers say that it is impossible to get cars for use over the railroads, and the railroads state that they are never able to furnish them because they can not get the money to purchase them with.

Mr. CASS. That is true at certain seasons of the year.

The CHAIRMAN. And yet at those seasons of the year you want to require them to turn their cars over to the electric roads, although the electric roads furnish no corresponding equipment for it?

Mr. CASS. No, sir. I do not want to require them to turn them over to the electric roads at all, if it is not to the interest of the steam roads, the electric roads, and the public; and if the car can not be taken out on the electric road and unloaded as quick or quicker than transferred at a junction point—

The CHAIRMAN. There is nothing in this bill to prohibit an electric road and a steam road making an amicable arrangement where it is to the interest of both of them. The question is whether we should force the steam road to turn its freight cars over to the interurban road for the benefit practically of the electric road, and although they furnish no corresponding equipment.

Mr. CASS. This bill is not alone for the purpose, as I understand it, of enforcing joint rates and through routes between trunk lines of railroad, but it is for the purpose of protecting the communities upon the short-line railroads that the trunk lines would not otherwise protect. I wish to call your attention to a complaint that has been very recently filed before the Interstate Commerce Commission, known as



the "Interstate Commerce Commission's docket No. 3080," in which the Tennessee Central Railroad, a small railroad in the southern part of the United States, complains because the Southern Railroad and the Illinois Central Railroad, their principal connections, are endeavoring to enforce an unfair settlement of a claim against the Tennessee Central Railroad, and are withdrawing and cancelling the through routes and through rates with the Tennessee Central Railroad Company, which has had the effect of increasing the rate to every community located upon that short line of steam railroad.

Now, if the Tennessee Central Railroad Company could not appeal to the Interstate Commerce Commission, where would the communities be? How would the communities be situated on that line of road, and how would they get protection for the money invested? Now, suppose the Tennessee Central Railroad were to string a trolley wire over the entire length of the line, but in every other respect to remain the same as it is now, why should the fact of that trolley wire being over the Tennessee Central Railroad deprive it of the right to protect itself, the shippers, and the public located along that line of road, by appeal to the United States Government for the purpose of rectifying things of that nature? Why should a railroad, because it has a trolley wire over it, and which furnishes more adequate service, both passenger and freight, switching and everything else, to the public located along its line, be deprived of the right of appeal to this tribunal of justice, you might term it, as between competing railroads? It is not for the purpose of enforcing through rates with trunk lines that this bill is being introduced, but it is for the purpose of protecting the small steam railroads. Why is not the small electric railroad entitled to the same protection if it transacts the same business?

The CHAIRMAN. You have a very different idea of the purpose of this bill from what I have. I have never heard the suggestion that you have made before, as to the purpose of the bill.

Mr. CASS. That is my understanding of the bill.

The CHAIRMAN. Oh, I do not say that you are not right.

Mr. CASS. That would be its operation most certainly.

Mr. RICHARDSON. The paragraph in reference to street railroads reads as follows:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

Do you want that stricken out?

Mr. CASS. I want to strike that out; yes, sir.

Mr. RICHARDSON. Don't you think to strike that out would give the great railroad systems a wonderful power over the electric railroads?

Mr. CASS. Leaving that would give them the wonderful power. If it is stricken out, whenever an electric railroad is in a position to serve a community commercially, then the community can make application for service, and if the steam railroad, the connecting line, refuses to grant that rate, we can appeal.

Mr. RICHARDSON. Do you think that the commission ought to have power to create through routes between the steam railroads and the electric railroads of the country?

Mr. CASS. The question of routing the car, the question of the character of the car, I don't see enters into it at all. It seems to me

that it is a question of ability; the construction, the character of a railroad's traffic, and the communities that are interested along the railroad. The question of rolling stock is another matter. An business that you move across this great country is not moving ill through cars. The Chicago, Burlington and Quincy Railroad every fall places an embargo on the railroad from which I have just retired as vice-president, a trunk-line railroad, and we were obliged to send our cars, our own cars, around to Omaha, standing alongside of the Burlington and transfer grain into our own cars in order to move it on to the market. There is no more reason why you should not transfer the shipment from the cars of the steam railroad to the cars of the electric road equally as well as you can transfer them from the cars of the steam railroad to the barges of a water line. But the communities located upon that electric railroad who are doing business—buying stock, shipping grain, doing the same character of business that is done on steam railroads—should not be deprived of the right to reach the market towns upon the same basis of rate as the man who is located upon the trunk-line railroad which was originally built through to the market town. That is the point, and that is the position we will find ourselves occupying if you leave that in the bill. And I know whereof I speak, because I have sat in the councils of the steam railroads for years in executive meetings.

The CHAIRMAN. What road were you connected with?

Mr. CASS. The Chicago Great Western.

The CHAIRMAN. That was a Stickney road?

Mr. CASS. Yes; I retired on the 1st of September, 1909.

The CHAIRMAN. That is the thorn in the side of the railroads?

Mr. CASS. I was one of the thorns. I have sat in the councils of trunk-line railroads while vice-president of the Chicago Great Western, and have been ostracized from good railroad society because I would not refuse rates with connecting railroads that were operated by electricity. That is what I have done, and I know whereof I speak. I know that if this clause is left in the bill the communities on the electric lines of railroad will suffer from lack of adequate railroad facilities and adequate rates.

Mr. RICHARDSON. If that clause is left in?

Mr. CASS. Yes, sir.

Mr. RICHARDSON. Simply because they have no place to appeal to?

Mr. CASS. Yes, sir. We have here the president of the Cedar Rapids and Iowa City Electric Railway, a road which runs from Cedar Rapids to Iowa City through Linn County, a county in which a small steam railroad of 19 miles in length has also been constructed, and he was obliged to appeal to the Interstate Commerce Commission in order to get through routes to the communities located upon his line of railroad, notwithstanding the fact that he has four or five inland communities that are thriving trading posts located upon the line of railroad, and the little 19-mile steam railroad, which only had half as many people located upon it, only cost half as much, and only furnished less than half as good service to the public, was granted through rates, and why I don't know; but probably because some fellow, somebody, told some hired man of the trunk-line railroad that he ought not to make rates on the electric railroad, and so they did not.

Mr. RICHARDSON. Your idea is that the same control should be exercised by the Interstate Commerce Commission over the interurban railroads as the steam railroads of the country?

Mr. CASS. Yes, sir.

Mr. RICHARDSON. And that the same rules and rates and regulations, and everything else of that kind that apply to steam roads should apply to the electric roads?

Mr. CASS. Exactly; precisely.

Mr. RICHARDSON. Then wouldn't you put into the hands of these great railroad systems, as compared to the electric railroads, overwhelming power and strength, and could not they absorb and destroy and break down these short electric lines?

Mr. CASS. I don't see how they can do it.

Mr. RICHARDSON. It would be the greater controlling the lesser.

Mr. CASS. But mark you, if an electric railroad has the earning power to pay its fixed charges and maintain itself in a healthy condition, then the only way the steam railroad can break it down is by buying up its stock and absorbing it. But if you place in the hands of the steam railroad the right to refuse to permit the electric railroad to enjoy through routes and through rates, and to draw the products that are along its line of railroad to the connection with the steam railroad who participates in the rates, then you have placed in the hands of the steam railroad a power of breaking down that electric railroad, or reducing its earning power, and of destroying its communities commercially.

Mr. RICHARDSON. It looks to me that the electric-railway system being apparently so absolutely different in so many material and physical manners, that if it is governed it ought to be governed on an entirely different system from the steam railroad.

Mr. CASS. Not at all. It is not the intention of this bill that the commission shall go throughout the country seeking places to make joint rates and through routes without complaint, but it is, as I understand it, the intention, and is the law at the present time, that the commission has the right to investigate the complaints, and if upon investigation they find that the carriers are entitled to be regarded as through routes with joint rates and the interchange of business already established, then why not leave it that way? That is all we ask. We don't ask you to do anything more to protect, but don't take anything away from us; that is all we ask. Leave us where we are.

Mr. STAFFORD. Have these electric railway lines in Iowa been equipped with freight equipment from the time of their organization?

Mr. CASS. Yes; all of the electric lines that are known as "interurban railroads" in Iowa were originally built for the purpose of transacting a commercial railroad business in addition to the passenger business.

Mr. STAFFORD. For what purpose do you use the steam locomotives on your line?

Mr. CASS. Largely in construction work, and opening the road of snow in the winter time.

Mr. STAFFORD. Do you use them at all in connection with the hauling of freight?

Mr. CASS. Yes, sir; at times when business is very heavy; at certain seasons of the year when business is heavy on the line of road. If we haven't sufficient electric equipment to care for the movement

of the business, then we put the steam locomotives in the service, either upon passengers or upon freight.

Mr. STAFFORD. Under your franchise you are permitted to use any kind of power in the propulsion of your trains, whether steam or electric or other motive power?

Mr. CASS. Under the city franchises we have no right to run steam locomotives upon the streets, but we own independent terminals for our commercial business; we operate freight houses, switching lines, and own a railroad built upon a private right of way reaching the center of the city of Waterloo, a town of 30,000 people.

Mr. STAFFORD. So where you operate your short lines it is virtually a railroad in all respects, with the privileges of operating by steam or any other motive power that you may elect?

Mr. CASS. Exactly so.

The CHAIRMAN. If you have an interurban road that runs through a town, or the main street, say, where the city council has granted a franchise under the state law for the conduct of passenger business, and the Interstate Commerce Commission orders you to make a joint rate with a steam railroad to carry freight business through that town, what would you do in that case?

Mr. CASS. I don't believe that the commission would make the order if the character of the road was such as it was not possible to comply with the order.

The CHAIRMAN. That is the question, whether it would not be possible—the power of the council over interstate commerce.

Mr. CASS. Well, sir I would have to refer you to a lawyer. I do not believe I could answer.

The CHAIRMAN. Take, for instance, the city of Chicago: There is the City Railway Company down town, and the City Railway Company connects with the South Chicago City Railway Company, which runs from Sixty-third street down into Indiana, thereby making an interstate road or connection. The City Railway Company down town is only authorized to carry passengers and mail, but supposing the Interstate Commerce Commission orders those two roads to form a joint route, the steam railroad in Indiana under this proposition to carry freight, what will be done? Or, must the commission, before making the order, ascertain the wishes of the city council of every town through which the road passes?

Mr. CASS. I think that the commission, before it makes an order, does investigate all of the circumstances surrounding the question involved. Now, of course, what the effect would be if the commission would make that order might, I suppose, be the same effect of any Government order that might be made affecting the rights of States and municipalities in States. That is getting me into the woods. I am not an attorney, so I don't know what the result would be.

The CHAIRMAN. Isn't it quite a common thing for cities to grant the right to a street railway company or interurban railroad company to run on the main streets for the purpose of doing a passenger business and not a freight business?

Mr. CASS. Yes, sir; that is very usual. Now, understand, I am not here advocating that all interurban railroads are able to transact a commercial railroad business in connection with the steam railroads.

The CHAIRMAN. No; but you are advocating a proposed law that shall give the Interstate Commerce Commission power to compel them to.

Mr. CASS. No, I am advocating the proposition that you shall not take away from the Interstate Commerce Commission the power that they now hold.

The CHAIRMAN. Oh, no; I beg your pardon; you go further than that. We are not proposing to take away any power the Interstate Commerce Commission now has.

Mr. CASS. It now has the power to order those roads, and is doing it.

The CHAIRMAN. It now does not have the power to order a rate anywhere where an existing joint rate exists.

Mr. CASS. Exactly.

The CHAIRMAN. That practically covers their case. But here is a proposition to give to the Interstate Commerce Commission a power to order a joint rate wherever it pleases, regardless of an existing joint rate, and the exception is only from that; so it is not the proposition to take away that which it now has, but a proposition affecting a power it is proposed to confer. The position to which you apply is that they may, after hearing or complaint, or on their own initiative without complaint, establish through routes, joint rates, and so forth. That is a change of the existing law, broadening and increasing the power of the commission, and the exception is to that.

Mr. CASS. Well, why discriminate?

The CHAIRMAN. I am not arguing the merits of this proposition; I am trying to get information.

Mr. CASS. Let me cite this (reads):

The commission shall not, however, establish any through routes, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

The CHAIRMAN. I don't think they ever have established through rates.

Mr. CASS. They have in the State of Iowa, and the president of the company who made the complaint before the commission sits here, and I testified before that commission in connection with the establishment of those rates, and the commission did establish the through route and the through rate under the laws as they now exist. This was done in connection with an interurban railroad and a steam railroad. The interurban railroad was the Cedar Rapids and Iowa City Railway, and its president is with us to-day. The steam railroad was the Chicago and Northwestern Railway, and Commissioner Clark is the commissioner who sat at the hearing.

The CHAIRMAN. The Iowa commissioner.

Mr. CASS. No, sir; Commissioner Clark, of the Interstate Commerce Commission.

The CHAIRMAN. Well, I say it was the Iowa commissioner. Isn't he from Iowa?

Mr. CASS. I think not. Is he?

The CHAIRMAN. Yes; a credit to the commission and a credit to the State of Iowa.

Mr. STAFFORD. I wish to direct your attention to the phraseology in the clause just read, and ask you whether, under the present phraseology, it would exclude that part of your electric railroad which is operated as a freight line. As I understand it, you have two differ-



ent characters of railroad in connection with the operation of your system, one where it is limited exclusively to passenger travel, where it goes through the cities, and another where you have a special franchise that gives you the privilege of operating it for freight purposes. In the latter instance this phraseology would not exclude this line from the jurisdiction of the Interstate Commerce Commission, because the phraseology, as I read it, is limited to interurban electric passenger railroads and not interurban electric railroads.

Mr. CASS. We, of course, as I stated before, have been declared to be an interurban railroad. That declaration was made by the supreme court of the State of Iowa.

Mr. STAFFORD. But this limitation applies only to interurban electric passenger railways, and not to interurban electric railroads, which have the privilege of operating both passenger and freight, like any other railroad.

Mr. CASS. But why not? The point comes back to me constantly: Why eliminate from the power of the commission the control over the electric railroads as the interests of the public demand?

Mr. STAFFORD. I understood you to contend that you did not wish to grant to the Interstate Commerce Commission the right to establish through rates over interurban electric passenger railways.

Mr. CASS. Yes; I do wish to grant them that right if the public demands, and if the interests of the public demand that that should be granted.

Mr. STAFFORD. I misunderstood your contention, then. I understood that you did not wish to confer jurisdiction so far as passenger rates were concerned, but you did wish to extend it for freight rates.

Mr. CASS. In my opinion—I may have misspoken myself, but to make myself clear I will make this statement: That, in my opinion, it is in the interest of the public that the Interstate Commerce Commission have such jurisdiction over all transportation companies that the needs of the public may demand upon investigation, regardless of the character of the motive power used, or regardless of the character of track it runs over, or whether it is a waterway or not. I believe that the interests of the public demand that.

Mr. STAFFORD. I don't think that this bill in anywise excludes from the control of the Interstate Commerce Commission those characters of railroads which are operated by electricity; for instance, the Long Island City Railroad, and lines out West, where they are operated by other than steam power, because they are included as railroads—as railroad carriers, but that an exception is sought to be made so as not to include exclusive electric passenger railways which are not engaged in freight, carriage at all.

Mr. CASS. Conceding that you are right, of what benefit can that clause in this bill be to anyone other than the trunk-line steam railroads? I have not been able to see since I read that clause—

Mr. STAFFORD. I can readily understand the reason for a distinction between electric passenger railways, exclusively confined to that character of travel, and railroads which are engaged, whether operated by electricity or steam power, in both freight and passenger business. For instance, in my home city, Milwaukee, we have an interurban service, but there is no connection whatsoever in the operation of its passenger travel between it and existing railroads. It is a separate system entirely. There are no freight rates which are called upon to

be established in the interurban communities throughout the country over any territory which is on the line of the interurban railroad.

Mr. CASS. Taking that view of it, and assuming that that is true, suppose that it is to the interest of some community—suppose that later on some community finds that it is greatly to its interest to have a freight business done upon a portion of the Milwaukee interurban line. Does it do any harm that there may be a body of men who should have the right to review—

Mr. STAFFORD. I take a different position from what you do, to the effect that this phraseology in nowise excepts that line of railroads when it does do a freight business, because it is an electric railroad regardless of whether it is passenger or freight.

Mr. CASS. Assuming that it is an electric railroad, a great many electric railroads in densely populated communities are entirely satisfied to operate their roads in order that they may go ahead and keep out of the government regulation or control. Ordinarily the fellow that is afraid of government regulation is the fellow that is liable to do something he ought not to do. We are not afraid.

Mr. STAFFORD. I don't think there is really any dispute between us. I believe that the bill, as phrased, would give the Interstate Commerce Commission the authority to regulate, on through business, freight originating or dispatched on electric roads that do a freight business.

Mr. CASS. But you put a clause in here which gives the other fellow a mighty good fighting chance to keep them from doing it. If the Supreme Court of the United States should hold as the supreme court of the State of Iowa has held in our case, we could not do the business.

Mr. STAFFORD. You stated that you are not a lawyer, and of course it is a question of construction.

Mr. CASS. That is it exactly. If the United States court should hold as the state court of Iowa has held in our instance, then the Waterloo, Cedar Falls and Northern Railroad would be shut off from 40 per cent of its revenue; 40 per cent of the revenue of our road doing business in communities that have no other railroad. If it is not the intention or desire of the Government to interfere with that class of railroads, and if it is not intended that the mere fact of a trolley wire being strung over a track should not change the character of the railroad, the railroad that does the same character of business that the steam railroad does, and this committee sees fit to report a bill with an amendment so that that can not be misconstrued by the Supreme Court unless they construe it as to all railroads, then so far as our company is concerned, and so far as the interurban railroads of Iowa are concerned, we will be happy, contented, and satisfied. But I don't yet see why the Interstate Commerce Commission should not be given the right upon hearing, and upon finding the physical conditions of both the railroads equal in transacting business with the public, to transact that business if the public demands it.

Mr. PETERS. You expressed the opinion that steam railroads should not be allowed to own stock in interurban railroads. Do you think that prohibition should not extend to cases where it is allowed by the law of a State, or do you think that should be an absolute prohibition?

Mr. CASS. I think, on the broad principle of transportation, that consolidation in transportation, in competitive transportation, should

be prohibited wherever it is met and under whatever circumstances. I believe that the public demands that condition; that the public welfare demands it. But I don't know that I can exactly answer your question to a closer point than that. That would be considering questions of constitutionality and of rights of States to govern, and so forth, and I would not know just what to say as to that. But I believe it should be prohibited wherever possible.

Mr. RICHARDSON. If I understand you correctly, if this paraphrase is left in the bill, that affords the steam railroads a much greater and a better and more efficient opportunity to crush the electric railroads than if it is stricken out?

Mr. CASS. Precisely so, and I think I speak advisedly, because I have gone through steam railroad practice from the position of a telegraph operator up to that of vice-president, and I have built an electric railroad.

Mr. ADAMSON. It occurred to me that possibly in making your lines a part of a through route there might be diverted some business from a trunk line, and it might diminish to some extent the revenue of the trunk line?

Mr. CASS. Well, I can answer that in this way: That during my administration upon a trunk-line railroad, directing the commercial affairs of that railroad, I made it a practice to encourage the building of electric lines, carriers, and connections, and I established with every electric line that was built along the line of the Chicago Great Western Railroad, while I was with that company, through rates and routes willingly, because I discovered that the benefit that the electric railroad brought into communities, the added prosperity, added a great deal more to the trunk-line business than it took away from it. It has never been the practice on the part of trunk lines, outside of the Chicago Great Western, to encourage the building of the electric lines, and the trunk lines have stoutly refused to make joint rates with electric railroads ever since I knew anything about it.

Mr. ADAMSON. They might be available as feeders, but if permitted to become undesirable rivals, the trunk lines would not think them so valuable.

Mr. CASS. I am perfectly willing to let the trunk lines take care of themselves, but I think the public demands that they have the through routes.

The CHAIRMAN. We have given you one hour, Mr. Cass, and we have some other witnesses here to be heard.

Mr. CASS. I shall be glad to yield whenever the gentlemen desire.

Mr. RICHARDSON. What is the mileage of the electric railroads of this country?

Mr. CASS. I should say about 38,000 miles.

Mr. RICHARDSON. What is the capital stock?

Mr. CASS. I should say about \$2,000,000,000. Gentlemen, I thank you very much for your kind attention.

**STATEMENT OF MR. WILLIAM G. DOWS, PRESIDENT AND GENERAL MANAGER, CEDAR RAPIDS AND IOWA CITY RAILWAY, OF CEDAR RAPIDS, IOWA.**

Mr. Dows. Gentlemen, I don't know that I have anything very much to offer in addition to what Mr. Cass has said, but from reading those few lines in this bill it does seem to me that that would be the means of withdrawing all through rates from interurban railroads.

There seems to be a misapprehension on the part of some members of the committee as to what is meant when we say "electric interurban railroads." I am president of the Cedar Rapids and Iowa City Railway, a line of railroad from Cedar Rapids, Iowa, to Iowa City, Iowa. It has its own freight terminals, both in Cedar Rapids and in Iowa City, which it owns. From these freight terminals it is built on a private right of way, 100 feet wide, and the rail and the construction is the same as of a steam railroad.

Now, we are perfectly capable of handling any and all kinds of freight in carload lots. The line bisects a quadrilateral, so to speak, which is formed by four roads; and we have towns on our line of road which are not served by any other railroad. In fact the nearest practical wagon route for one town is to Iowa City and Cedar Rapids, which would be 14 miles either way. We handle a great deal of freight, and when we built this road we endeavored to have the different railroads put in joint rates and through routes over our line, but they absolutely refused to do it. So we brought an action against the Chicago and Northwestern before the Interstate Commerce Commission, and after a hearing which was bitterly fought and went over a series of months, the commission ordered the rates put in, saying that we were able to handle any and all kinds of freight.

Mr. STAFFORD. What is the decision?

Mr. Dows. The decision of the Cedar Rapids and Iowa City Railway *v.* The Chicago and Northwestern Railway.

Mr. STAFFORD. When was it decided?

Mr. Dows. About a year ago; a little over.

The CHAIRMAN. Is that joint rate in effect now?

Mr. Dows. Yes, sir; but it is only in for two years, and the consequence is that if this bill passes they can withdraw it, and we do not think that would be fair; we have grain elevators, stock yards, and everything of that kind on our line of road.

Mr. KENNEDY. And you want these three lines stricken out?

Mr. Dows. Yes; I think they ought to be. What harm would it do to strike them out?

Mr. RICHARDSON. The commission would pass upon the road competent and qualified to do business and apply the through rate. You think that discretion ought to be left in the hands of the commission, and that it would not be left there if this paragraph should be left in?

Mr. Dows. Yes.

Mr. STAFFORD. Do you consider your line of electric railway an electric passenger railway, which is the limitation carried in this clause?

Mr. Dows. Now, the passenger revenue of the average interurban railroad is greater than the freight revenue. That is the reverse of

the steam railroads. For instance, on the Northwestern road, the passenger service is about 30 per cent of the gross and the freight service 70 per cent of the gross, and that is the reverse of the electric roads.

Mr. STAFFORD. The revenue does not determine the character of the railway, but the character of the service.

Mr. Dows. The reason why our passenger revenue is greater than our freight revenue is the character of the service we give. We give an hourly service. We stop anywhere along the line and pick up passengers with our passenger cars. The consequence is that that continuous service that we give practically all day long, for twenty hours of the day, makes our passenger revenue really greater than our freight revenue, notwithstanding our freight revenue is as large as the average small road in the State of Iowa.

Mr. STAFFORD. I suppose no one can guess what the construction of the court would be as to what would be meant by "passenger railway."

Mr. Dows. I don't think anyone could.

Mr. RICHARDSON. Is there not a very material difference between the construction of a steam railroad and that of an interurban railroad, in the character of the rails used?

Mr. Dows. No, sir; the type of the rail on our road is the standard for steam-railroad construction.

Mr. RICHARDSON. I thought the rails were much heavier on steam roads.

Mr. Dows. No, sir; we use the standard section rails, the same as the steam railroads use, and our bridges are the same; our wooden bridges are exactly of the same type and the same plan as those upon the Northwestern, upon the Milwaukee railroad, or upon any other road.

Mr. RICHARDSON. You do not carry as heavy freight loads as the steam railroads?

Mr. Dows. We handle cars of 110,000 pounds, or 55-ton cars.

The CHAIRMAN. What weight rail do you use?

Mr. Dows. We use the T rail, 70 pounds to the yard.

Mr. RICHARDSON. That is unusual, is it not?

Mr. Dows. No; the Fort Dodge, Des Moines and Southern Railway is the same, and the interurban railroads of Des Moines, Iowa, has the same class of construction.

Mr. RICHARDSON. As originally constructed and intended, the road was built for passenger traffic, wasn't it?

Mr. Dows. It is not, no; because the population is not dense enough, but that they have to depend upon the freight business in order to exist.

Mr. KENNEDY. Do you have freight cars that you permit to go off of your line and go to their destination to be unloaded?

Mr. Dows. Yes, sir. We have tariffs over pretty near all of the different roads; we are in the different classifications, that is, of the trunk line tariffs, and we handle the standard equipment exactly the same. We have a physical connection in Cedar Rapids with the Chicago, Milwaukee and St. Paul and the Chicago and Northwestern, and at Iowa City we connect with the Chicago, Rock Island and Pacific.

Mr. RICHARDSON. Are you equipped with freight cars sufficient to meet the demands of traffic, or do you rely upon the steam railroads for those cars?

Mr. DOWS. We have some freight equipment of our own, but we have never found any difficulty in getting any amount of freight equipment that we want from the other roads.

Mr. RICHARDSON. That is where the steam railroads are complaining so much; about their cars?

Mr. DOWS. We have never heard any complaint; they have never made any complaint to us. These interurban railroads stand ready to buy the freight equipment whenever it becomes necessary.

The CHAIRMAN. Would you object to a provision in the bill that if you interchanged business you should provide your proportion of equipment?

Mr. DOWS. I don't think there would be any objection to that.

The CHAIRMAN. Are the interurban railroads generally financially able to purchase the necessary equipment?

Mr. DOWS. Yes; any one of them can buy them on what we call the car-trust plan.

Mr. ADAMSON. You are not to furnish cars for freight excepting that which originates on your line?

Mr. DOWS. Say you have a car from the Illinois Central, you can load that back to the Illinois Central line. I use that merely as an illustration.

Mr. RICHARDSON. Suppose the Illinois Central is the connecting link between two great railroad systems; if you carry out your ideas fully, a car loaded on one of the steam systems could pass over your road to the connection and you would not object to that?

Mr. DOWS. We would be glad to have them.

Mr. STAFFORD. What is the length of your line that is operated for freight purposes?

Mr. DOWS. We call it  $27\frac{1}{2}$  miles.

Mr. STAFFORD. How many freight cars is it equipped with?

Mr. DOWS. I think we have twenty-odd cars, and they are all standards.

Mr. STAFFORD. Have you any locomotives?

Mr. DOWS. No, sir.

Mr. STAFFORD. Under your franchise you are permitted to use that kind of power?

Mr. DOWS. We can use anything of that kind; for instance, last fall there was a big football game between the Agricultural College at Ames and the university at Iowa City—Iowa City is the university town. We did not have electric equipment enough to handle the crowds, so I rented from one of the large trunk lines a complete steam train, with a passenger engine—even the engineer and fireman were furnished—and we operated that over the line.

Mr. STAFFORD. How many freight cars are owned by the electric railroads in Iowa?

Mr. DOWS. I couldn't say.

Mr. STAFFORD. Can you give us the mileage of the electric railroads in Iowa that are engaged in freight business?

Mr. DOWS. I should say 200 miles. Wouldn't you say that, Mr. Cass?

Mr. CASS. Well, I should say between 200 and 300, but nearer 300 than 200.

Mr. STAFFORD. The franchise under which you operate is different from the franchise in some other cities in that you have the privilege of using any kind of motive power?

Mr. DOWS. Yes; under the laws of Iowa they make no difference between an electric railway and a steam railroad. They are all organized under the same laws. But wherever the railroad or railway corporation or anything of that kind appears in the code, it is made applicable to railroads—what they call interurban railroads. The statute first defined that an interurban railroad was a road that ran from one town to another whose motive power was other than steam. Then it made everything applicable to that.

The CHAIRMAN. What would you say to this proposition in reference to the issuance of stocks and bonds? Would it interfere with the construction of new electric roads if they should be required to sell their stock at par?

Mr. DOWS. Well, I think it would.

The CHAIRMAN. Do you want to come under the provisions of this bill?

Mr. DOWS. Well, we are willing to come under the provisions of the bill; we are willing to take our chances.

The CHAIRMAN. I know; still we would like to know the effect of the bill. You have two or three hundred miles of electric road in Iowa, and there ought to be a great field for additional roads there.

Mr. DOWS. There is.

The CHAIRMAN. It is not the custom of those roads to sell their stock at par, is it?

Mr. DOWS. If they can.

The CHAIRMAN. If we should prohibit them doing any other way, wouldn't it have quite a deleterious effect upon the construction of new roads?

Mr. DOWS. I think that any law which would prohibit the issuing of any stock only at par and the sale of any bonds only at par would stop the building of roads.

Mr. ADAMSON. Do you think they would pay any attention to any such a law if Congress attempted to prohibit it?

Mr. DOWS. I think they would have to if they did an interstate business, wouldn't they?

Mr. ADAMSON. I think not. I would not be alarmed about the matter if I were you.

Mr. DOWS. In speaking of the handling of freight down through the city of Chicago, I want to say that the Interstate Commerce Commission could not order anything of that kind.

The CHAIRMAN. Why not?

Mr. DOWS. Simply because they are not constructed to handle it, with switches and proper curves. You could not get a car weighing 100,000 pounds around a 50-foot radius curve.

The CHAIRMAN. But it would not be necessary to have a car of that weight. They have been trying to get that road in Chicago for years.

Mr. DOWS. It is strange that they can not do it.

The CHAIRMAN. They not only can get it through, but where they are permitted to do it they do do it. They could not handle a 100,000 pound car, perhaps, although their rails are a great deal heavier than the rails of any steam railroads in the country, and their track is better constructed than any steam railroad track on earth.

Mr. RICHARDSON. It is not true, is it, that all of these interurban railroads are operated in cities under the same character of construction as the steam lines?

Mr. DOWS. I do not know of an interurban railroad in the United States that is built with less than a 60-pound T rail, whether it is used clearly for passenger, or for passengers and freight.

Mr. RICHARDSON. Then the public generally has a wrong impression as to that?

Mr. DOWS. The public has understood that the interurban railroads are cheaper to build, and that it is a sort of imitation railroad, and cheaper to build than the old line. But I want to say that it costs more per mile to construct an interurban railroad than it does a steam railroad.

Mr. KENNEDY. As a rule the rails are heavier than those of the steam railroad?

Mr. DOWS. I won't say heavier, but they are heavier than the branch lines of railroad, but not the main trunk lines, I would say. But they are built for high speed. The cars are expensive, and I do not know of any track that is not built after the approved steam fashion; that is, approved by engineers, and with anywhere from 2,640 to 3,000 ties per mile.

Mr. ADAMSON. Those local lines generally originate in local necessity, do they not?

Mr. DOWS. Yes, sir.

Mr. RICHARDSON. Would you be willing to have a paragraph in here reading something along this line: "That the interurban railroads should be regulated and governed by all of the practices, rules, rates, and regulations that are applied under the law to steam railroads?"

Mr. DOWS. Well; we are now making reports to the Interstate Commerce Commission.

Mr. RICHARDSON. But do you think that would be advisable as applied to the whole country; to regulate them all?

Mr. DOWS. I think wherever they do an interstate commerce business they should. What difference does it make?

Mr. RICHARDSON. But they rarely do an interstate-commerce business.

Mr. DOWS. They only tend to regulate the interstate carriage if they are a part in a chain of interstate commerce, so why not be regulated the same as the steam roads.

Mr. RICHARDSON. That would be making an exception of one where there are seventy or eighty that do not have interstate commerce.

Mr. DOWS. They would not have to be regulated. They are intrastate not interstate. There would be no necessity.

Mr. ADAMSON. All you want is to strike out the exception, is that it?

Mr. DOWS. I am afraid that with these three lines in the bill it will mean to check the building of the railroads of the kind of which I am president. Here is a town with a grain elevator, stock yards, and everything of that kind, and a town that has no other railroad connection except ours—

Mr. RICHARDSON. Why do you think if this paragraph is left in here that it will give the steam railroads great power to destroy and break up the interurban railroads?



Mr. Dows. I know how hard they fought us; I know what they have done; I know they refused to put any rate in with us; I know that the passenger rate we had from Cedar Rapids to Iowa City was 65 cents and they went to work and put steam service on and hauled passengers for 25 cents.

Mr. ADAMSON. They were not as clever as Mr. Cass's road.

The CHAIRMAN. But his road went back into the hands of a receiver.

Mr. CASS. We lost our road by being good.

Mr. Dows. They fought us; they would not put in any rates of any kind. Here were these towns, these communities of people that wanted to ship their stock, and they had to pay us the local rate either to Iowa City or Cedar Rapids and then the through rate from Cedar Rapids or Iowa City, instead of having a through rate from the point of shipment. Finally the Interstate Commerce Commission came in——

Mr. RICHARDSON. They withdrew the rate and they refused division?

Mr. Dows. They did not give us the rate.

Mr. RICHARDSON. Would not agree with you at all; that is, they would not let their cars go over your tracks, and vice versa, or yours on their tracks. You appealed to the Interstate Commerce Commission, and they established a through rate for you?

Mr. Dows. Yes; after a hearing that covered nearly a year, or more.

Mr. RICHARDSON. After this steam system had refused to recognize you as a commercial line, refused to let their cars go over your lines and yours over theirs, then the Interstate Commerce Commission acted in the matter and made them do it, and they saved you?

Mr. Dows. It not only saved us, but it gave these communities through which we went the benefit of the through rate.

Mr. PETERS. What do you do now that you have it?

Mr. Dows. It takes a long while to get the tariffs in and get them started. We are doing quite a business and it is growing every month. I should say that last year—I didn't bring the figures with me—but I noticed before I left home that we handled eighty-odd cars of stock in January for one thing, and fifty-odd of them went to Chicago. That went over 27½ miles of line.

Mr. PETERS. You stated that you had 70-pound rails. Have you determined the weight of the rails that you connect with?

Mr. Dows. Seventy-pound.

Mr. PETERS. So you have practically have an electrically equipped steam railroad?

Mr. Dows. Yes; we can and have used steam over it right along.

Mr. PETERS. Isn't there a line of distinction between an electrically equipped steam railroad which does an interurban business, and a street railway which does simply a local business, a passenger business, and a business the principal feature of which is on the highway, which does not have fares, which does not sell tickets, but simply picks up passengers along the line, the same as the old horse railroads?

Mr. Dows. Yes; there is a difference, and the commission does not have to put in these rates, if I understand the law, I might say to the chairman. It says that they have a right to put in a rate where satisfactory, and where a through rate does not now exist. Now, my understanding would be, the physical ability to handle the business. Of course if a road is not physically able——

Mr. RICHARDSON. The commission can also, under this bill, initiate any rate it pleases upon any line of railroad?

Mr. DOWS. Yes; I think so.

The CHAIRMAN. You say that formerly you could not get joint rates with the steam railroads?

Mr. DOWS. No, sir.

The CHAIRMAN. And that after the passage of the Hepburn law you filed a petition with the Interstate Commerce Commission, and received authority to have a joint rate?

Mr. DOWS. Yes, sir.

The CHAIRMAN. I suppose you would consider that that legislation would naturally be desired by the people of Iowa, so that you could get these joint rates. Do the people of Iowa think that you ought to have the power to get a joint rate?

Mr. DOWS. I think they do. I know that everybody on our line does, and some of the farmers joined in the petition.

The CHAIRMAN. And in order to prove their desire to have a joint rate, they retired Mr. Hepburn from Congress—the one who made it possible for them to get the joint rate.

Mr. DOWS. Well, that was down in the Eighth District, and I live in the Fifth District. That is down on what we call the "Reservation." Those fellows are from Missouri.

The CHAIRMAN. Is there any difference of opinion out there on the subject?

Mr. DOWS. On the subject of what?

The CHAIRMAN. As to whether Mr. Hepburn ought to have been retired?

Mr. DOWS. I think he ought not to have been. I think that Pete Hepburn ought to be in Congress to-day, and I say that with all due respect to Mr. Jamieson, whom I know very well.

Mr. ADAMSON. Aren't your people waking up to the fact that it is better to elect any Democrat than even the best Republican?

Mr. RICHARDSON. And aren't your people dissatisfied and discontented about this tariff?

The CHAIRMAN. It was because the Hepburn bill was put through that the people at that time retired Mr. Hepburn—to show their dissatisfaction with him.

Mr. DOWS. You must remember that they had Colonel Hepburn's scalp once or twice before. He represented a district where they got his scalp before.

The CHAIRMAN. But Mr. Hepburn was fourteen years chairman of this committee and passed the Hepburn bill. He put through the law which you say was of great benefit to the State of Iowa, but which the people of his district say was not a benefit.

Mr. DOWS. I don't think that the people of Iowa are against that law.

Mr. WASHBURN. Is it in order to move that we strike all of this political discussion from the record?

The CHAIRMAN. No; because it is past, and is now in the record.

Mr. RICHARDSON. I think the reporter should be instructed to leave all this out, because it is only mere pleasantries.

Mr. KENNEDY. I would like to call your attention to the operation of an electric road. Do you know anything about the comparative economy of operating by electricity and steam?

Mr. DOWS. I never have operated by steam.

Mr. KENNEDY. You know something about it?

Mr. DOWS. I should say that the operating by electricity, upon a short line, is very much more economical.

Mr. RICHARDSON. Do you carry United States mail?

Mr. DOWS. Yes, sir.

Mr. KENNEDY. You have heard a good deal of talk about the steam railroads abandoning steam and equipping their lines with electricity, have you not?

Mr. DOWS. I believe there is a good deal of talk about that.

Mr. KENNEDY. The character of motive power is not a proper classification, is it, of carriers? Do you know that the gas engine, in business, is putting the steam engine out of business?

Mr. DOWS. It is doing a great deal of stationary work that the steam engine used to do.

Mr. KENNEDY. And the gas engine, in only a few years that it has demonstrated its utility, will probably supplant the steam locomotive?

Mr. DOWS. I don't know anything about that. I know that gasoline cars are being operated by a number of railroads over their branch lines.

Mr. KENNEDY. Then the gas, being exploded in the cylinder by an electric spark, would make it more of an electric railroad than a steam road, would it not?

Mr. DOWS. Yes; I suppose it would.

Mr. KENNEDY. Do you know of any steam railroad that is not a passenger railway?

Mr. DOWS. No, sir; I do not.

Mr. KENNEDY. And would come as much within this language as your road?

Mr. DOWS. I should think so. I don't know of any steam railroad that does not haul passengers and do a passenger business, and that is not a passenger railway.

#### STATEMENT OF MR. W. J. FERRIS, OF LA CROSSE, WIS.

Mr. FERRIS. Mr. Chairman and gentlemen, I am in somewhat of a different position as compared with Mr. Cass and Mr. Dows, who have just finished, inasmuch as we are not operating at the present time. We have recently secured a franchise in the city of La Crosse and one in the city of Onalaska, and the city council of Galesville and also the city council of Winona, Minn., have under consideration franchises for the building of this interurban line. We have spent a good deal of money in the surveys and the preliminary work of organization and in complying with the laws of the States of Minnesota and Wisconsin. I am in hearty sympathy with the expressions of Mr. Cass and Mr. Dows regarding the lines on page 18 of this bill. In the building of these proposed lines we will tap a country that has no railroad facilities at the present time, no means of getting their goods to market excepting through and over the highways, which are quite hilly in that section, and we believe when we come into the city of La Crosse with this railroad the carload lots of freight from that upper section should have a through rate established for the markets of

Chicago and elsewhere. And it seems to me, and is my judgment as well as that of both Mr. Cass and Mr. Dows, that this clause referred to here is going to be a detriment to the working of our proposition.

There is little that I can say beyond that point, gentlemen, except that if that clause is what I think it is it will probably stop the building of this proposed line, even though we have gone quite a ways with it and spent a good deal of money, because we are relying upon the interchange of freight with the passenger roads.

Mr. STAFFORD. Under the franchise that has been granted are you privileged to operate your railway with any kind of power?

Mr. FERRIS. Not within the city limits of La Crosse.

Mr. STAFFORD. Outside of the city limits you are privileged to operate regardless of the character of power?

Mr. FERRIS. Yes, sir.

Mr. STAFFORD. So your road would be virtually a railroad operated by electricity?

Mr. FERRIS. By electricity, yes.

Mr. STAFFORD. What is the length of the proposed line?

Mr. FERRIS. About 36 miles.

Mr. PETERS. Isn't there a distinction between such a road and a strictly street railway?

Mr. FERRIS. Yes, sir.

Mr. PETERS. Wouldn't you say that there is more of a line of distinction between their general business than the character of the interurban and the steam railroad? Would you not say that the interurban railroad was more similar in general character and the province it had to meet in the way of traffic and rates, and so forth, to a steam railroad than a street railway, one entirely operated in the streets, and which did simply a local business, the carrying of passengers for one fixed fare, 5 cents or multiples of 5 cents, and did not sell regular railroad tickets? You say that there is more of a line of distinction between those two—that is, a street railway and an interurban railway—than between the interurban and the steam?

Mr. FERRIS. I think so.

The CHAIRMAN. Do you expect to issue your stock at par value and receive cash for it?

Mr. FERRIS. That is a question.

The CHAIRMAN. You have not referred to this bill as affecting that proposition; but if this bill becomes a law as it stands it would require you to sell your capital stock at par for cash.

Mr. FERRIS. If the bill becomes a law, I presume we will have to take our chances with it in every respect.

The CHAIRMAN. Why, there is no question about that; you would be like anybody else. Everybody will take their chance if the bill becomes a law. But what I wanted to get at is what effect it will have. In other words, we have not had presented to us this point of view: There is considerable rivalry between steam and electric roads in some portions of the country. The electric railroads are the ones that are mainly the new roads that are being built. What effect will this have upon the building of new electric roads and the attitude of steam roads toward the proposition which might prohibit the construction of new electric roads?

Mr. FERRIS. I don't know as to that.

Mr. KENNEDY. The electric road is now principally built by moneys received from bond sales, is it not?

Mr. FERRIS. In some instances; yes, sir.

Mr. KENNEDY. Practically all the finance for building a road is realized from the sale of bonds?

Mr. FERRIS. In the State of Wisconsin that does not apply wholly, for the reason that 20 per cent of the capital stock must be paid in.

Mr. KENNEDY. Of the capital stock?

Mr. FERRIS. Yes, sir.

Mr. KNOWLAND. You think that you would rather take your chances on being compelled to sell your capital stock at par than to have this paragraph remain in the bill?

Mr. FERRIS. I think if that paragraph remains in the bill and the treatment is accorded our company that has been explained here before the committee as having been given to the other roads that have been represented here that we would rather not build the road.

The CHAIRMAN. I might suggest to you that the provisions that you are objecting to have no relation to the proposition about the issuance of stock. The exception is not made in the section that requires that all companies shall issue their stock for par. Even if this provision that you object to should remain in the bill, you would still be required to sell your stock for par.

Mr. KENNEDY. Would it affect the sale of the bonds? You have had some experience in financing these roads, have you not?

Mr. FERRIS. No; not in the financing of interurban roads.

Mr. KENNEDY. But you know about it. Would it make it more difficult to sell the bonds if you issued a great lot of stock as practically a bonus to go with the bonds?

Mr. FERRIS. Yes, sir; it would make it more difficult.

Mr. KENNEDY. You might have to sell the bonds a little cheaper?

Mr. FERRIS. Probably so.

Mr. KENNEDY. The roads of the character that you speak of, through my section, have been built entirely by the sale of bonds. The stock represents franchises and one thing and another obtained in cities, but the money has been entirely received from the sale of bonds.

Mr. FERRIS. That is largely true.

Mr. KENNEDY. Do you think it would make it impossible to build this class of railroads if we should pass this bill requiring the stock to be sold at par?

Mr. FERRIS. It might possibly have a very serious effect on the building of the roads; yes, sir.

Mr. KENNEDY. But a few hundred shares of stock could be sold at par, and if you had the franchises and the charter from the State, why would not the bonds sell as well with only a few hundred shares of stock outstanding as though there were millions?

Mr. FERRIS. I should think they would. It simply is a question of dollars invested in the road, whether in stock or bonds.

Mr. STAFFORD. What you desire is to have, for your road, the interchangeable feature with the other railroads in through routings?

Mr. FERRIS. Yes, sir.

The CHAIRMAN. I will insert at this point a letter relating to express company franks, from Mr. T. B. Harrison, jr., who appeared before this committee.

(Following is the letter referred to:)

NEW YORK, February 14, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: When I made some suggestions before your committee on January 28 as to a change in the present law authorizing express companies to issue and exchange franks, and also authorizing railroad companies subject to the act to regulate commerce to issue complimentary free transportation to the officials of foreign railroad companies and their families while traveling in this country, the committee very kindly gave me permission to hand in a memorandum showing the changes I suggested.

I did not have an opportunity to prepare such a memorandum before leaving Washington that afternoon, and I have been away almost continuously since, and have not, therefore, had such opportunity until to-day. I have taken the liberty of preparing an amendment to section 1 of the act which, I think, will put in effect the suggestions I made to the committee, if the committee consents to them, and I herewith inclose a copy of such amendment, on which the proposed changes are shown in italics.

I may say that the proviso authorizing common carriers to interchange free or reduced transportation of or for their officers, agents, surgeons, attorneys at law, and their families, is practically the exact language of the present New York law, and I have tried to guard this by providing that the transportation authorized to be exchanged shall be for the exclusive use or consumption of the person or persons to whom issued.

I may add that in almost all of the States which have adopted antipass laws within the last few years the laws have been broad enough to authorize express companies to issue and exchange franks, and that in several of those States in which the laws were not broad enough for this authority amendments have been passed giving such authority, notably in Alabama and Michigan.

I assume, of course, that the committee will recommend the passage of some general bill amending the Hepburn Act; and if so, and the committee agrees with the suggestions I have made on behalf of the express companies and the American Railway Association, I would respectfully suggest that the attached amendment, or some similar one, be put in as a section of the bill recommended by the committee.

Yours, very truly,

T. B. HARRISON, Jr.

That section one of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, is hereby amended to read as follows:

SECTION 1. That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this act shall include express companies and sleeping-car companies. The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks,

and terminal facilities of every kind, used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this act shall, after January first, nineteen hundred and seven, directly or indirectly issue or give any interstate free ticket, free pass, or free transportation for passengers or property, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law, and their families; to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks, and physicians and nurses attending such persons: *Provided, That this provision shall not be construed to prohibit the interchange of free or reduced transportation between common carriers of or for their officers, agents, employees, attorneys, and surgeons, and their families: And provided further, That the transportation of persons and property authorized to be exchanged hereunder shall be for the exclusive use and consumption of the person or persons to whom it is issued; nor to prohibit railroad companies subject to the act from issuing free transportation to officials of foreign railroad companies and their families, when traveling in the United States; nor to prohibit any common carrier from carrying passengers or property free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: Provided further, That the term "employees," as used in this paragraph, shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families," as used in this paragraph, shall include the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars; and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.*

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate, upon reasonable terms, a switch

connection, with any such lateral, branch line of railroad, or private side track, which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the commission, as provided in section thirteen of this act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof, and the justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders of the commission, other than orders for the payment of money.

(At 11.55 a. m. a recess was taken until 2 p. m.)

#### AFTER RECESS.

The committee met at 2 o'clock p. m., Hon. Irving P. Wanger in the chair.

#### STATEMENT OF E. M. TERRY, REPRESENTING THE NATIONAL LUMBER EXPORTERS' ASSOCIATION.

Mr. TERRY. Mr. Chairman, may I make a brief statement?

Mr. WANGER. Certainly.

Mr. TERRY. I represent some lumber exporters.

Mr. WANGER. What is your name?

Mr. TERRY. My name is E. M. Terry.

Mr. WANGER. Whom do you represent?

Mr. TERRY. The National Lumber Exporters' Association. I have particular reference to bill No. 16312, Mr. Mann's bill. In section 2, on pages 8 and 9, it provides that the local rate shall not be higher than the rate to the port on a through export shipment.

Mr. WANGER. What section is that?

Mr. TERRY. Section 2: ~~It provides that the local rate shall not be higher than the rate to the port on a through export shipment.~~

If any common carrier, etc., shall charge or receive a greater compensation on a shipment to a port of entry than a through shipment to the same port, to a foreign destination, etc.

That is in reference to receiving a higher local rate, as I understand it, than a rate on an export shipment through the same port. I really do not know the reason for the provision, but we merely wish to suggest that if it remains in it would be fair to the exporters to provide also that no export to the port shall be higher than the local rate. In other words, it should be equalized both ways. The provision as it stands is for the benefit of the local domestic shipper; but as I say, if the provision is retained we think it would be the proper thing to provide also that the export rate to the port should not be higher than the local rate.

Mr. ADAMSON. Are there ever any cases where the export rate is more than the local rate?

Mr. TERRY. Oh, yes; there are a number of cases. We have already presented a case to the Interstate Commerce Commission where a number of export rates are higher than the local rates to the port. As a matter of fact, I do not see where the question comes in



as regards the difference in rates, in the first instance, because the rates are not competing. The export shipment does not compete with the domestic shipment.

Mr. ADAMSON. I would rather have your proposition than this one, if we are going to have either.

Mr. TERRY. My proposition?

Mr. ADAMSON. Yes; I say I would rather put in your proposition than the one that is in the bill.

Mr. TERRY. Well, in our view there is no reason why there should be any difference in rates. That is, there is no reason why there should be a higher local rate than an export rate to the same port, and, as I say, we have already presented a case to the Interstate Commerce Commission on that very question.

Mr. WANGER. Does not the section as it reads relate to both exports and imports?

Mr. TERRY. Yes; but that does not touch the export feature as regards a higher export rate than a local rate. It only refers to where the local rate happens to be higher than the export rate.

Mr. ADAMSON. As I understand the gentleman, he is trying to prevent any rates from being cheaper than local rates.

Mr. TERRY. You see, there are two classes of traffic to the same port, we will say, for instance, to New York. The domestic shipment is delivered locally to a yard in New York City. That is one class of traffic. Another class would be where the shipment goes through to New York and is not stopped there, but goes on to a foreign destination. There are two rates, we will say, to the port of New York. One is the domestic and the other is the export rate.

As I understand it, this bill seeks to provide that the domestic rates to New York shall not be higher than the export rates. I really do not know the reason for it, but, as I said before, if it provides for that, it should also provide, in fairness to the exporter, that where an export rate to that port should happen to be higher than the domestic rate, the same rate shall be charged; that is, that the export rate should not be allowed to be higher than the domestic rate. That is the other side of the proposition. It is only one sided, so far as we can see, as it stands now. It is in favor of the domestic shipper.

Mr. STAFFORD. In the case you instance, is there a separate rate when the goods are to be exported from New York, known as the export rate, or is it a through rate to the point of dispatch in a foreign country?

Mr. TERRY. Well, there are really no through rates filed. Only the inland proportion of the through rate has to be filed.

Mr. STAFFORD. So at present there is in the tariffs a local rate from an interior point to New York, for instance, and if that character of shipment goes abroad there is a different rate for export business to New York?

Mr. TERRY. There may be a different rate. Now, in the case of shipments via the port of New Orleans, there are several different rates. I mean, there are several different cases where the export rates are higher than the local rates.

Mr. WANGER. You want the rates to be identical, whether the article is for export or domestic?

Mr. TERRY. We do not want the local rate to be higher than the export rate.

Mr. ADAMSON. It looks like this goes both ways and provides for all that. I am afraid it provides too much. The only thing that saves the commerce of this country from absolute destruction through the iniquities of the protective tariff is that the railroads have brought in goods at a lower rate to the interior of the country.

Mr. TERRY. Of course I am not speaking of the import traffic now.

Mr. ADAMSON. This applies both ways.

Mr. TERRY. Yes; but it does not cover the export-rate feature, as I have tried to explain.

Mr. ADAMSON. I think it does.

Mr. TERRY. It says that common carriers shall not charge or receive a greater compensation for the transportation of property, etc., between any point in the United States and any port of entry in the United States.

Mr. ADAMSON. Yes; than it would on a shipment through beyond the limits of the United States.

Mr. TERRY. Yes.

Mr. ADAMSON. Well, that is an export or an import rate.

Mr. TERRY. Yes; but that refers to the higher local rate, and it does not refer to a case where the export rate to the port happens to be higher than the local rate.

Mr. ADAMSON. I disagree with you, and I will vote against that whole section.

Mr. TERRY. As a matter of fact, we do not understand just the reason for the insertion of the provision, because, as I said in the first instance, the two classes of traffic are not competitive.

Mr. STAFFORD. I suppose the basis of your contention is that for the protection of our export trade the export rate should be at least no higher than the local rate?

Mr. TERRY. That is the idea, exactly. We have no objection to the provision as it stands as regards the local rate, but if it is retained there we see no reason why an amendment should not be inserted covering what this gentleman has just pointed out—that no export rate shall be higher than the local rate.

Mr. ADAMSON. I am with you. The imports and the exports go hand in hand and are generally averaged up in all periods. When you increase one, you increase the other. When you decrease one, you decrease the other.

Mr. WANGER. Have you stated all you wish to say?

Mr. TERRY. That is all, sir.

Mr. FAULKNER. Mr. Chairman, we are ready to go on now in regard to the minimum speed of 16 miles per hour. I only want to put on two or three gentlemen who are familiar with what we may call the "cattle roads"—the Atchison, Topeka and Santa Fe, the Burlington, the Chicago, Milwaukee and St. Paul, and the Union Pacific.

Mr. WANGER. All right, Senator. Will you call the first witness?

#### STATEMENT OF D. L. BUSH, GENERAL MANAGER CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

Mr. BUSH. Mr. Chairman and gentlemen, with reference to the proposed bill requiring a minimum speed of 16 miles per hour in the transportation of live-stock shipments, I wish to say for the Chicago, Milwaukee and St. Paul Railway Company, and I assume others are

in the same situation, it would be practically a physical impossibility to comply with such a requirement without a very large reduction in the train load.

In the operation of our trains a reduction of not less than 20 per cent is made for the train load of an engine handling a live-stock train as compared with the train load of the same class of engine hauling dead freight, and even at that we are not able to make what we consider fairly good time with live-stock trains.

Mr. RICHARDSON. Why does that reduction of 20 per cent occur?

Mr. BUSH. Why is it necessary?

Mr. RICHARDSON. Yes.

Mr. BUSH. For the expedited movement. Perhaps this will explain that much better: Taking any engine in service on our railroad, and we took as a basis what is known as our Class G 7 engine, which is practically our standard freight engine, a 10-wheel engine, it has a tractive power of 32,600 pounds at a speed of 10 miles per hour. Increasing the speed to 16 miles per hour gives that same engine a tractive force of 27,710 pounds, or a reduction in the train load of 15 per cent.

Mr. STAFFORD. Is your unit pounds?

Mr. BUSH. Yes, sir; the tractive power is pounds.

At a speed of 30 miles per hour the tractive force is reduced to 16,940 pounds, or a reduction in train load of 49 per cent.

In handling live stock on the Chicago, Milwaukee and St. Paul Railroad we have two classes, one known as range stock, which comes to the Chicago, Milwaukee and St. Paul road at a point on the Missouri River known as Mobridge. That stock comes to us in train lots of 18 to 20 cars and up to 25. We establish a schedule of forty hours to Chicago, a distance of 810 miles, which is twenty and a quarter miles per hour.

In the month of October, in handling 8,900 cars, the average time was forty-six hours, but on a schedule of forty hours, taking 10 trains just as they came, one after the other, they met with a resistance in their movement, due to passenger trains and opposing freight trains, of eight hours, reducing the actual running time to three and a half hours, making a speed of twenty-five and a half miles per hour, approximately. In the last part of the run, a distance of 9 miles from Western avenue to Union Stock Yards, we must have not less than two hours for the 9 miles. Through the other gateway we must have three hours for the 22 miles.

In handling the local business, it is assembled from different stations and from the branch lines and junction points. As an illustration, we would receive 5 cars of stock that came from a branch line, delivered at the junction with the main line to a through train. They would have but 5 loaded cars. We would have to go back to the point where the 5 cars were reached in picking up by the branch line, and figure on a minimum speed of 16 miles per hour from there to the yards. With 5 cars of stock we could make the time. We could make better than 16 miles per hour. I think perhaps with 5 cars we could average 25 miles per hour; but we would have to run so many stock trains with this very light tonnage that it would barely pay the wages and fuel consumed by the engine; that is, the

wages of the entire crew and the fuel and other supplies to run these long distances of 400 or 500 miles with 5 cars of stock.

Consequently, to reduce the cost of operation, that engine moves from the point where she first got the 5 cars and picks up until she gets a reasonable train load. If she is delayed in doing that, we make a further reduction in tonnage. In many instances we run 150 or 200 miles with 40 per cent of the train load, in order that the stock may reach the market in time. If it is there later than 8 o'clock, it is not considered available for sale on the day of arrival.

This local stock is offered to a concentrating point known as "Savanna," 128 miles out, a point where we deliver it or move our trains over another belt line. There are instances where there are 16, 18, or 20 of those trains following each other on a Monday morning. A slight failure that could not be anticipated in the engine of the leading train or in the engine of any of the following trains would set them all back to a point where those following would not be able to get to the market and meet the requirements of the law.

We have had no complaint from the shippers except in individual cases. There are instances where we would get, say, 20 cars of stock at a point on our Council Bluffs division, and there would be, perhaps, 3 other cars on the next freight district, 124 miles. We would undertake to have some local train gather up those 3 cars and take them to the division terminal, where they could be set into this 20-car train and then continue the run uninterruptedly, except trains that could not be expected to make reasonable time.

Now, on those we do receive complaint. Three shippers from different points would complain that their stock had to be loaded too early and were a long time on the road. That is literally true; but if the train having the 20 cars had been required to stop at these three different places, switch out the cars, and get them into the train, the whole 23 would have arrived late for the market, and probably would have been carried over until the following day.

We feel that any fixed minimum would hardly be fair to the shippers, as a whole, and not fair to the service; but it must be apparent to the stock shipper and to others that a well-managed railroad is only successfully managed to the extent that they are able to keep their cars and engines in motion. The greater extent to which that can be accomplished, the greater the reduction in the cost of conducting transportation, and the greater the earning capacity of your property.

These delays that occur have been claimed to be due to overloaded trains. I do not believe there is a western railroad that overloads a stock train except in cases of emergency. We have instances, which I will use as an illustration, where 20 stock trains arrive at Savanna, following each other, perhaps, on a schedule of five hours for 128 miles. Some engine in that group may fail. There is no other engine available that could be gotten to the disabled one or to take her place, and that stock may be divided up between the first three following trains. I can recall one instance of handling 46 cars of stock for the last 32 miles, which is the greatest number, with one exception, in a period of seven years of which I have personal knowledge. The average is 25. Thirty-five is the exception.

We are as much interested in the prompt handling of live stock as the owner, but the conditions at all terminals, where the stock must be finally delivered, all arriving there on two days in the week, or

practically all, make it a physical impossibility to expedite the service during the last 10 or 15 miles of the run. We have brought stock trains into Chicago and stood in line with the several other railroads as long as seven hours before our trains could be delivered at the stock chute. Of course in those instances the stock shipper complains very bitterly, and he has a reasonable right to complain; but when the conditions are known it is a matter over which nobody has any control except the stock shipper himself. They all go to the markets on Mondays and Wednesdays, and it is largely the western stock. The three largest stock-carrying railroads in the Chicago territory are the Chicago and Northwestern, the Burlington, and the St. Paul. There are instances when those three railroads on Mondays take in there as high as 2,000 cars.

Mr. WANGER. How rapid is the movement of stock trains compared with other freight trains?

Mr. BUSH. Taking the actual records on our railroad, barring the serious weather conditions of the past two months, the average speed of freight trains on the Chicago, Milwaukee and St. Paul, as a whole—it depends somewhat on the division—was not under 10 miles per hour, and up as high as 13. The stock-train movement is figured on the basis of approximately 18 miles per hour. On the movement from the Missouri River to the yards, taking the entire movement for the month of October, the average speed of our trains was 19 and a fraction miles per hour.

Mr. KNOWLAND. How fast do your fruit trains move?

Mr. BUSH. Well, slightly less than that.

Mr. KNOWLAND. Less than the cattle trains?

Mr. BUSH. Yes. The fruit trains are made up a little different. The fruit comes to us in a rather different form and shape. We get five to ten cars of fruit, and we will aim to put in that train enough dead freight to get to about 65 per cent of the carrying capacity or tonnage rating of the engine. But there is one thing in connection with the fruit trains, as a rule, that I want to call attention to. They move over a portion of the territory where the traffic is the most dense in the daytime. The stock movement passes over the dense traffic divisions during the night. I think you all know that the movement of any train is expedited with less energy during a daylight movement than after dark. The engine does a great deal more slipping. Enginemen as a rule have not the same confidence in a night movement, particularly in the handling of a freight train, as they have in the daytime, when they can see everything. That is perfectly natural. We all walk about ourselves with greater care in the nighttime than we do in the daytime. I have served in every capacity in the railway service, and I know that that is true so far as enginemen are concerned. There is something that causes the feeling that when it becomes dark and you are depending upon fixed signals, with the same train load and the same class of car you will not do quite as well.

Mr. RICHARDSON. It is not always attributable to engines. It is attributable to the employee of the railroad running the engine, is it not?

Mr. BUSH. To the man; yes.

Mr. RICHARDSON. It is not the fault of the engine, is it?

Mr. BUSH. An engine does more or less slipping on the rails; and our superintendent of motive power, who is here as a visitor awaiting his turn before another committee, I think will bear me out in the statement that the efficiency of an engine in that movement, as a rule, is somewhat reduced. Is that so, Mr. Manchester?

Mr. MANCHESTER. I would say so.

Mr. RICHARDSON. How can you account for that?

Mr. BUSH. You do not get the same adhesion with the rail from the moisture in the atmosphere. You use more sand to give your engine the tractive force applied. During the daytime, except in rainy weather or foggy weather, there is but very little sand used under the driving wheels of an engine to keep her on the rail so as to exert her power properly.

Mr. STAFFORD. In the average speed for your freight trains of 10 to 13 miles per hour, do you refer to the through freight trains?

Mr. BUSH. I take the trains as a whole. I take the average speed of the trains as a whole.

Mr. STAFFORD. What is the average speed of your through freight trains from Chicago to the Northwest?

Mr. BUSH. Approximately 10 miles per hour, the dead freight trains.

Mr. STAFFORD. Taking into consideration the average speed for stock trains, when formed exclusively as stock trains, and computing it from the time that the stock is received on branch lines, what would be the average rate for the entire distance, if you have that calculation?

Mr. BUSH. The basis upon which those movements are made is on 18 miles per hour, but it is not maintained.

Mr. STAFFORD. On the branch lines you do not maintain the same dispatch as after the train is once made up in a solid cattle train?

Mr. BUSH. Oh, no, sir.

Mr. STAFFORD. From Savanna to Chicago, all your cattle trains are solid trains?

Mr. BUSH. Yes, sir.

Mr. STAFFORD. What speed is maintained in that distance?

Mr. BUSH. The average for the entire month of October was 17.4 miles per hour.

Mr. STAFFORD. The average speed, as I understand you, before the cars are assembled at Savanna or any other point where you assemble the cars, is much less?

Mr. BUSH. Very much less; yes, sir.

Mr. STAFFORD. Can you give the committee any estimate as to what that average is?

Mr. BUSH. Well, perhaps I could give you an illustration. We have several branch lines leading to our main line, which extends from Chicago to Omaha. There are a number of branch lines leading to it across the State of Iowa. The schedule time of the freight trains on the branch lines is usually on the basis of 10 to 12 miles per hour. During the days of the week on which the stock run is heavy the speed will not average on that branch line more than 7 miles per hour. That is for this reason: A train will start, say, 56 miles from the main line—we have a case of that kind—and will probably pick up from 5 to 10 cars of stock. The train men assist in loading it. While the car may be right at the loading chute, the shipper is very anxious to

put his stock into the car at the very last moment, to get the best or the greatest time from the time shown on the waybill that the stock is loaded to reach the yards without unloading under the 28-hour law, or, if that is extended by written consent, 36 hours. They will wait until the train arrives at the station. The train crew will take the engine around to the stock car. Sometimes there may be two or three to load at that station, and only one can be spotted at the chute at a time. We furnish facilities for moving the cars by hand, but they are rather loath to do that. They do not want to get the stock into the cars and have it remain there fifteen, twenty, or thirty minutes and then be obliged to unload for feed, water, and rest in transit. The speed of the train on branch lines, when moving between stations, is 20 to 25 miles per hour, but from the time they load at the first station until they reach the point where it is delivered to the main line, the total time, and reducing it to the thought that the train is in motion all the time, will only give you 8 miles per hour, while between stations they may be running 25 or 30.

Mr. RICHARDSON. If you operate upon the minimum of 16 miles per hour would you be able to make up the time on the branch roads after you strike the main line?

Mr. BUSH. We do.

Mr. RICHARDSON. Do you make up the difference in the time you have lost?

Mr. BUSH. Not always. That is the difficulty with the proposition. We are compelled under this measure to maintain a rate of speed that will give us a minimum of 16 miles per hour from the point where we have gotten into the train five cars of stock and until it reaches its destination.

Mr. STAFFORD. Taking the solid train, where you average 18 miles an hour, what is the maximum speed that the train has to go in order to maintain it through the entire run, taking into account the delays that are encountered by going through terminals and cities and the like?

Mr. BUSH. Where the grades are in favor of the movement, a speed of 50 and 55 miles an hour is often made. We have stock trains that move from Savanna to Franklin Park, 128 miles, where we have reduced the tonnage to 20 cars, that have made that run in three hours and five minutes.

Mr. STAFFORD. Is there any competition between the stock-carrying roads running into Chicago for the traffic by reason of speed and other facilities offered to the patrons, to the stock shippers?

Mr. BUSH. I do not know that I am quite clear on that question. Do you ask if they attempt to make greater speed in order to secure the business?

Mr. STAFFORD. Yes.

Mr. BUSH. There is this about it. The railroads have gotten together a great many times with a view of undertaking to have this stock distributed over more than two days of the week. In that we absolutely failed. Other meetings have been held where it was suggested that we make a uniform schedule of speed. After such an agreement has been reached, and that has never been less than 16 miles per hour, after the stock has been assembled in train-load lots, then there has been a very honest and earnest effort on the part of all

the railways in the same territory to maintain the schedule, even at considerable loss in train loads.

Mr. STAFFORD. Has your company received any complaints from the stock shippers, complaining about the speed of the trains?

Mr. BUSH. No, sir. We have the individual complaints, as I mentioned to you here a few minutes ago, where the stock at two or three different points would be loaded earlier, to be taken to a division point, there to be put into the through train, and it is true that that stock would be loaded from an hour and a half, perhaps, to two hours earlier; but the 20 cars of stock, as illustrated, would suffer a delay in making those three stops, and if the time was pretty close to get to the market, the entire 23 would not reach there, but by having the three cars loaded a little earlier, the entire train load, the 20 and the 3, likely would all reach the market.

Mr. STAFFORD. What has been the effect of the operation of the 28-hour law so far as expedition is concerned while the stock cars have been in transit?

Mr. BUSH. Well, it has had the effect of reducing train loads somewhat to reach the market, to expedite the movement of the train. There are other instances where there are a great number of cars that are likely to require feed, water, and rest at yards that we have provided for that purpose, so great a number getting in there at so short a period that we have reduced the tonnage. In fact, we have made three trains out of two, and gotten those three trains in to make room for the balance that must be taken care of at the feeding point.

Mr. STAFFORD. Then, as a general statement, you can say that the expedition of live stock has been increased since the operation of the 28-hour law?

Mr. BUSH. I think it has had a tendency to increase the speed somewhat. I don't think it has improved the service any. The stock shipper, you know, is very averse to unloading. He considers it quite a loss.

Mr. WANGER. How long have you held your present position?

Mr. BUSH. I have been general manager of the road since October, 1, 1909. Prior to that, for seven years, I was general superintendent. I have been with the company thirty-nine years.

Mr. WANGER. How does the speed of stock trains at present compare with what it was ten years ago?

Mr. BUSH. Well, it is considerably better. It is more reliable. There were instances ten years ago where we had on our railroad during the entire shipping season an entire movement of live stock that would hardly amount to what we now move in thirty days. Live-stock trains ten years ago were handled by smaller power, in smaller cars. The congestion at the marketing center was very much less. The density of traffic was 70 per cent less than at the present time. A train could leave a point, say, 500 miles from the yards and meet passenger trains that were scheduled at a rate of speed that would permit of their taking the sidetrack to let the live-stock train pass them on the main line. Passenger trains have become so heavy and the demands of the public for faster time have become so great that it is quite out of the question to put passenger trains, through trains or local trains, on the sidetrack for our stock trains.



Then, again, there is the speeding of freight trains. A stock train ten years ago could leave Savannah on a single track—it is now a double-track line—and reach Chicago or Franklin Park, 128 miles, and the only stops that it would be necessary for them to make would be for coal or water.

In addition to that, in addition to the resistance due to heavier train movement, there are a great many other railroads that have crossed that line. At that time there was only one railroad crossing at grade. At this time there are not less than seven. At all those points the speed must be reduced, even though they are protected by interlocking plants and fixed signals, that the engineer may be able to stop his train if the signals are against him.

So that I think the rate of speed to-day, while the train is in motion, is 10 to 15 per cent greater than it was ten years ago. Then, again, with the small train, say with a small engine handling 20 cars of stock, and the larger engine handling 25, there is more chance, a greater risk of a coupling becoming separated. They have been strengthened a great deal, but in the hurry to get out of stations the effort to make quick and sure stops has its tendency to weaken those fixtures, and after several applications of air and stopping the trains we break a knuckle or a coupling pin. I think all the operating officers would say that the speed of trains while in motion between stations, except on the adverse grades, is much faster now than it was ten years ago.

MR. KNOWLAND. What amount of stock do you carry, compared with other roads?

MR. BUSH. We are the second or third largest stock-carrying road in the Northwest.

MR. KNOWLAND. You have had, then, no general complaint as to the speed of your trains except in individual instances?

MR. BUSH. No, sir.

MR. KNOWLAND. You have had no complaints from the stock associations?

MR. BUSH. No, sir.

MR. KNOWLAND. And the complaints you have had have been from individual shippers?

MR. BUSH. Individual cases.

MR. KNOWLAND. Have there been many complaints from them?

MR. BUSH. Very few.

MR. KNOWLAND. As a practical railroad man, you are firm in the conviction that the sixteen hours could not be maintained on stock trains, are you?

MR. BUSH. I am very sure that it can not be.

MR. KNOWLAND. What speed would you say could be maintained?

MR. BUSH. I do not think there should be any fixed now.

MR. WANGER. The report of the solicitor of the Department of Agriculture for 1909 shows 39 cases, I think it is, as to the Chicago, Milwaukee & St. Paul, of penalties assessed under the 28-hour law.

MR. BUSH. Yes, sir; I testified, I think, in eight of those.

MR. WANGER. Is it not practicable to avoid those suits?

MR. BUSH. Why, in answering that I believe I will have to say that if it was, we would not have violated the law. I will illustrate one of those cases to you. I testified in the case before Judge Landis. One of the cases was this: A car of horses was shipped from a station

called Neola, Iowa. He did not sign the request for an extension of eight hours, bringing it up to the 36-hour limit. When the train reached a station known as Kirkland, where we have small feeding yards, we had exceeded the time by about forty minutes. The conductor called his attention to it—that was without the extension of eight hours—and requested that he sign a request extending the period to thirty-six hours, which he did. We then failed to get it to the stock yards, due to the fact that when we reached Franklin Park there was an accident between there and the stock yards; but to do all that anyone could do, knowing that the track would not be clear for about an hour and thirty minutes, we took the engine of the train and the caboose, switched the car out and took it back to Kirkland. In getting back to Kirkland we exceeded the limit by thirty-eight minutes. He put in a claim for damages, which we promptly paid without any investigation. He then notified the government inspector of our performance in the matter, and we were fined. We pleaded guilty and accepted the fine.

In some of the other instances it was shown that when we got to Franklin Park we did not have sufficient time, according to the average time consumed in making those runs, to get to the yards. We had no other place, without going back to Kirkland, to feed the stock. So we left Franklin Park with the stock, knowing very well that we could not reach the yards inside of the time limit. I think during that same period all the western railroads were brought before the court.

Mr. WANGER. What is the distance between Kirkland and Franklin Park?

Mr. BUSH. I do not just recall, but I think I can figure it out in a moment. It is about 53 miles, as I recall it. We discipline our trainmen, yardmen, and station agents—every employee concerned in the handling of stock—for their failure to ascertain if there is sufficient time after reaching the first feeding point to make the delivery and keep within the law.

Mr. STAFFORD. Were there any exceptional climatic conditions that interfered with the delivery of the cars within the 28-hour limit in these cases you refer to?

Mr. BUSH. At the time mentioned; no, sir.

Mr. STAFFORD. You said the other roads had suffered the same way?

Mr. BUSH. They did, at the same time. I think the Northwestern road had several cases. Am I right about that, Mr. Morse?

Mr. MORSE. We had several during that same year.

Mr. BUSH. But it was during the same period. The Rock Island, the Burlington, the Northwestern, and our road had several cases; not that that is any excuse for the Milwaukee road. It is simply to show you that all of the lines were interested in the movement, and each one was making an honest effort; and, considering the amount of stock handled, we were very successful in meeting the requirements of the law.

I might add that in the majority of cases the delay was between the point where we leave the main line, and the handling of the stock over the belt line. We figure to use three hours. We have eight hours from Savanna to the stock yards. We unload and feed at Savanna, and then we attempt to make that first 128 miles in five hours, and the last 22 miles in three hours.

It was claimed in that case, and the decision distinctly stated, that the railroads knew of the possibilities to move promptly between Franklin Park and the yards, and, as far as our road was concerned, also between Western avenue and the yards, and that even though we had the allowance of three hours, which was a little more than the average time consumed by the roads in the given period, that would not excuse us.

**STATEMENT OF W. E. MORSE, GENERAL SUPERINTENDENT  
CHICAGO AND NORTHWESTERN RAILROAD COMPANY.**

Mr. MORSE. Mr. Chairman and gentlemen, as concerns the Chicago and Northwestern Railway, we agree with the position assumed by the Milwaukee road and others here that it would be an impossibility for us to in all cases average a minimum of 16 miles per hour with stock trains.

I will undertake to avoid repeating what Mr. Bush has said in regard to the reasons for that disability, and try and enumerate a few that have not been mentioned, for which the shipper himself is largely responsible.

We have a great deal of difficulty with the shipper in loading his stock promptly. For instance, you start a stock train out from the station with two or three cars. They have cars to pick up at succeeding stations. It is a very common occurrence for the shippers at those succeeding stations to be late in loading, and that holds the other stock. I have in mind cases where in Dakota and Iowa this fall our stock trains were held for two hours for shippers to trade stock. They would get to bartering their stock after the train would get there and trade for two hours before we could get that stock train started again.

Mr. STAFFORD. Do you recognize any practice whereby the shipper will hinder the running of the train under those conditions you have stated?

Mr. MORSE. We undertake to avoid it, but we do not always have an officer on the train. It frequently occurs, and I could enumerate cases in evidence, if necessary.

Mr. STAFFORD. What is the practice as to collecting these stock cars on branch lines, as to whether the cars have to be already filled before the train arrives?

Mr. MORSE. Our instructions to agents are that the stock must be ready before the train arrives, but we are not able to enforce those instructions.

Mr. STAFFORD. Why not?

Mr. MORSE. If you will pardon me, I will explain. As a matter of fact, there is no class of shippers on the railroad to which the railroads uniformly cater to the extent they do to the stock shipper, in every respect. Of course our instructions are to the agents that the stock must be loaded before the train arrives, but as a matter of fact we rarely run away from a car of stock if it is not finished loading, or if we have not started loading. Sometimes the stock is late in arriving. It may not be the fault of the shipper.

Mr. STAFFORD. Is that the same practice you follow as to dead freight? If a carload of dead freight is not ready, do you wait until it is ready for shipment?

Mr. MORSE. No; not at all. We do not wait for dead freight.

Mr. STAFFORD. Will you, then, explain why it is that you give this special consideration to the shipper of stock?

Mr. MORSE. Well, it is because the shipper is not always at fault, as I started to say. The man from whom he bought the stock may be late in delivering part of it. They very rarely buy a car of stock from any one farmer. He may have bought this stock to be delivered at 4 o'clock in the afternoon, and the bulk of the stock will be there; but there will be one farmer with a load or two, or a drove, late, and he has to wait until it gets there. The stock may be unruly. Very frequently there is a great difference, as any man who is familiar with loading stock knows, as to the loading of stock. You may load a car of stock in fifteen minutes, and it may take you two hours. It depends upon the stock. It depends upon the hour of the day. There are a great many things that the shipper has no control over that delay the loading of the stock and the movement of the stock that may be in the train at that time.

The other disability that the shipper is, we sometimes think, responsible for is the fact that they concentrate their shipments. Last Sunday night we brought into Chicago between six and seven hundred cars of stock. We have brought in 1,100 cars in one Sunday night, requiring from 20 to 25 trains to handle them. Out of 110,000 cars of stock delivered to the Union Stock Yards in one year, that I recall, 55 per cent of it arrived on Monday morning, 25 per cent of it arrived on Wednesday morning, and only 20 per cent the balance of the week. We handle about 160,000 cars of stock a year, and that ratio will hold good uniformly.

The result is that you have 35 or 40 stock trains, or from 25 to 40 stock trains, in a fleet. You have delayed passenger trains and mail trains that must be let by, and, despite any efforts you can make, you will have bad luck in some of those trains. We could not possibly make 16 miles an hour. Our stock schedules from the Missouri River to Chicago are based on a contemplated speed of 22 miles an hour. We make it with probably about 70 to 75 per cent of the trains. Our stock schedules in Iowa and in Illinois on the main line, the through movement, are based on about 20 miles per hour. On our branch lines, at which 75 per cent of our stock is assembled—and by branch lines I mean local loading; there is not over 15 or 20 per cent of our stock received from connecting lines; practically 75 to 85 per cent of it is loaded on the Northwestern rails—on the branch lines, where this stock is loaded, the time, excluding the stops, is about 17 miles per hour. Including stops it is about 8 or 9 miles an hour, and this stock comes in from these branch lines, as Mr. Bush has explained, in small lots, and it is absolutely essential for all the main-line trains to consolidate with these small lots.

Now, there is another point with reference to the tonnage. The average stock train on the Northwestern road is from 25 to 27 cars. In the last ten years our tractive power has increased with our locomotives 100 per cent, while our stock train has increased not to exceed 20 per cent. At the present time our stock trains average about 40 per cent, not to exceed 40 per cent, of the capacity of the locomotive. By the capacity I mean the dead freight capacity. I have some figures here which I will not take the time to read—

Mr. STAFFORD. When you mention the dead freight capacity as your basis, do you mean the capacity of the engine or the average capacity of your dead freight trains?

Mr. MORSE. The rating of the locomotive for dead freight.

Mr. STAFFORD. What is the capacity of the tractive power for dead freight trains?

Mr. MORSE. What I mean is this. If an engine in dead freight is rated at a thousand gross tons we would not handle over four to five hundred tons of stock.

Mr. STAFFORD. How much would you handle of dead freight?

Mr. MORSE. We would handle a thousand tons. You see, our dead freight trains in Iowa and Illinois will run about 40 cars. With stock it will run from 20 to 25 cars.

Now, it seems to me, gentlemen, that, as Mr. Bush stated, the railroads are more interested than anyone else to expedite this stock, because, as a matter of fact, they are very glad to get it off their hands after they get it. It destroys the movement of all other traffic practically. In some cases it takes precedence over passenger trains.

Mr. KNOWLAND. Has the speed been increasing or decreasing?

Mr. MORSE. The speed between stations has been increasing, but there is a point that Mr. Bush touched upon with which you are possibly not familiar. The introduction of safety devices, block signals, interlocked railroad crossings, and all those things, while they safeguard the operation of trains, retard the uniform movement of those trains.

Mr. KNOWLAND. Your road is double-tracked, is it not?

Mr. MORSE. It is double-tracked and electric-locked to Omaha.

Mr. KNOWLAND. You could make a greater speed than a single-track road?

Mr. MORSE. No; because the density of traffic is proportionately greater. Moreover, as I stated before, a railroad that is block-signaled and has interlocking plants and the more modern appliances has slower train movement between two given points. They will run faster between stations, but they necessarily must slow down for these signals.

Mr. STAFFORD. That is the rule for freight trains, but it is opposite in effect as to passenger trains?

Mr. MORSE. No; I do not think so.

Mr. STAFFORD. The same applies to both?

Mr. MORSE. I think so.

Mr. KNOWLAND. Have you had many complaints from shippers on your road?

Mr. MORSE. Only individual complaints.

Mr. KNOWLAND. What percentage of the stock carrying do you have?

Mr. MORSE. I think we rank first or second. As I said before, we handle 110,000 to 120,000 cars a year into Chicago. We handle a large amount in to Cudahy, in Omaha, and to Sioux City.

Mr. KNOWLAND. You have had no general complaint?

Mr. MORSE. No general complaint.

Mr. KNOWLAND. Have you had much individual complaint?

Mr. MORSE. No; this winter we have had considerable on account of the bad weather, but ordinarily we do not get very many complaints.

Mr. KNOWLAND. Have you had any complaint from the associations?

Mr. MORSE. No, sir.

Mr. STAFFORD. What is the character of these individual complaints?

Mr. MORSE. Oh, they would have complaints where the engine would fail, or they would get a car off the track, or it would be foggy in the terminals, and the trains could not move rapidly in the terminals, and the man did not make the market. We get a complaint usually when a fellow reaches a falling market, but we never get any when he reaches a rising market, no matter how late he is.

Mr. STAFFORD. The proponents of this measure complain that there are delays in transit whereby the stock trains on the branch lines would move only at the rate, sometimes, of a mile an hour, whereby the individual could walk faster than the train and help push it along. Are there any instances of complaints of that character brought to your attention?

Mr. MORSE. I never heard of them. If you will think a moment, under the agreement of the railroads with their organization, and most of the railroads have that agreement, there is a movement of 10 miles per hour required, or a penalty. They penalize the railroads when they do not make 10 miles per hour with their freight trains. They penalize them through their organization, the engineers, firemen, conductors, and brakemen. Therefore it behooves the railroads to strive to make at least 10 miles per hour.

Mr. STAFFORD. That penalty is not imposed when there are good reasons existing for not going ahead?

Mr. MORSE. Oh, yes; in every case.

Mr. KNOWLAND. They also complain that you sidetrack live stock for fruit trains. Is that so?

Mr. MORSE. Well, I have no recollection of that. I do not think it is true. The schedule on the stock trains, as a matter of fact, is higher than fruit trains, and we have many cases where there are stock trains run from Clinton to Chicago ahead of our passenger trains, with orders right ahead of the passenger trains, 139 miles.

Now, we have some delays of stock that were touched upon by Mr. Bush, I believe, but it is very pertinent. Our stock is delivered to the Chicago Union Stock Yards Company at Ogden avenue. There are several railroads that use these tracks in common. Their own trains, their own cars, and their own engines take the stock to the yards; but the Northwestern, or the roads that use these tracks, are not owners of the tracks and have no control over their operation. It is very badly congested there, particularly on a foggy morning. Mr. Bush stated he had known 2,000 cars to be brought in there on a Monday morning. I have known 3,000; and they will come in there in six or seven hours. The stock shipper objects to reaching Chicago or reaching any other terminal before 2 or 3 o'clock in the morning. He wants to reach there between 2 or 3 o'clock and 8 o'clock. He does not want to reach there at 11 p. m. or 12 o'clock midnight. That is too early.

Mr. STAFFORD. Why does he regard it as too early?

Mr. MORSE. He thinks it is a waste of time. The stock is unloaded, and the market does not open, you understand. I do not know that I could exactly answer that question.

Mr. STAFFORD. It is not as convenient for him personally as a later hour?

Mr. MORSE. That is it, but he will strenuously object if you deliver his stock to the market, the Union Stock Yards, before 12 o'clock, as a general proposition. The result is that all this stock is massed in a few hours. If it happens to be foggy and you have a hundred trains, all using the same tracks and all coming up and unloading at the same chute, you can appreciate that the movement is very slow. The trains proceed very carefully as there is very dense fog in that vicinity. There is no place I know of, except possibly London, that has worse fogs than Chicago. We allow four hours for the terminal movement.

Mr. RICHARDSON. As I came in the room a moment ago I heard you make some remark about the railroad being penalized?

Mr. MORSE. Yes; with their organizations.

Mr. RICHARDSON. For not running more than 10 miles per hour?

Mr. MORSE. For not making 10 miles an hour. All the western schedules are based upon the payment of 10 miles per hour.

Mr. RICHARDSON. That is applicable to the transportation of stock?

Mr. MORSE. No; to everything; to all freight.

Mr. RICHARDSON. Do you pay that penalty frequently?

Mr. MORSE. We have to pay it if we do not make it.

Mr. RICHARDSON. And you do not make it at all in stock cars loaded with stock on branch lines, do you?

Mr. MORSE. No; not as a general proposition, on branch lines.

Mr. RICHARDSON. Some gentlemen have stated here that under no circumstances could you make 10 miles an hour on branch roads, where they gather the stock chiefly?

Mr. MORSE. No; they can not. We do not.

Mr. RICHARDSON. And yet under the law you are penalized?

Mr. MORSE. Not under the law. You misunderstood me. It is an agreement with the labor organizations. It is called overtime. For instance, a crew going 80 miles will get 100 miles for it, or ten hours, based upon the 10 miles per hour. If they do not make that 80 miles in ten hours, you pay them 10 miles per hour for every hour over that. It is an agreement with the labor organizations, the engineers, firemen, conductors, and brakemen. It is not the law.

Mr. RICHARDSON. That has a bearing, then, upon the sixteen-hour matter?

Mr. MORSE. No; it has the bearing that the railroads are undertaking to make at least 10 miles per hour. There was a question asked that brought out that proposition.

Mr. RICHARDSON. I was not in here when you brought it out.

Mr. MORSE. Therefore the railroads are undertaking to make at least 10 miles per hour with all their freight, whether it is dead freight or what it is.

Mr. RICHARDSON. By agreement with the labor organizations?

Mr. MORSE. And they are penalized if they do not do that with the labor organizations.

Mr. RICHARDSON. You pay the labor organizations?

Mr. MORSE. We pay them overtime, when they do not make the 10 miles per hour.

Mr. STAFFORD. They do not pay the labor organizations, Judge. They pay the members of the crew.

Mr. RICHARDSON. I understand. You just pay the employees?

Mr. MORSE. That is all.

Mr. RICHARDSON. It would have no relation to switching engines gathering up stock cars and assembling them?

Mr. MORSE. No; nor on branch lines, under 70 miles.

Mr. KENNEDY. It is a rather important thing for us to know whether the speed could be maintained, whether that would be possible.

Mr. MORSE. As a general average, you know, we make with our full stock trains 16 miles an hour, but there are so many cases that come up where we could not make that time that to be penalized by a fine would be very burdensome.

Mr. KENNEDY. Sixteen miles an hour, as a general average on all your trains would be regarded as rather good practice, would it not?

Mr. MORSE. It would be too fast for the pick-up train.

Mr. KENNEDY. I am talking about the average.

Mr. MORSE. No; I do not think it would. For instance, the Northwestern road, which is one of the heaviest stock-carrying railroads, as I told you before, originates 75 to 85 per cent of its stock. Our Sioux City division will, on Sunday, load 200 cars of stock, on that one division, and it is a small division. Now, that stock is loaded on various lines, the Mondamin line, the Mowille line, the Missouri Valley line, the Lake City line, and it comes into the main line of the Iowa division at Carroll in the Missouri Valley. That stock can not make an average of over 10 miles per hour on that division. When it struck the main line it would make 16 or 18 miles per hour.

Mr. KENNEDY. Then you think 10 miles per hour would be too high a minimum on that line?

Mr. MORSE. I would not say that. I do not think it is necessary. I really think it is unnecessary to establish a minimum. The railroads, as I said before, and I say that earnestly, have no class of traffic to which they give the attention that they give to the stock traffic, except the passenger and the mail.

Mr. RICHARDSON. In that matter of being penalized for not making 10 miles an hour, are you allowed any explanation for reductions by reason of accidents that are unavoidable and the work of God and storms?

Mr. MORSE. None whatever.

Mr. RICHARDSON. You have just got to come up and pay, anyhow?

Mr. MORSE. Yes, sir.

Mr. RICHARDSON. How long has that kind of agreement been in existence?

Mr. MORSE. Ten years. It will amount to from 5 to 10 per cent of the pay rolls of many of the railroads.

Mr. KENNEDY. You made a statement a while ago that I was surprised at. You said you thought these stock trains, keeping to the subject, could make as good time on these single-track roads as on the double-track roads.

Mr. MORSE. I think they can make better time in some instances.

Mr. KENNEDY. That rather surprised me. I supposed the meeting and passing of other freight trains would delay them.

Mr. MORSE. I know that is a surprising thing. I know the average layman and some railroad men who are not in the transportation department think a double-track railroad will move the trains more



rapidly than a single-track railroad; but usually they do not build two tracks until they have the traffic for them, and two tracks that are loaded to their maximum will not move the trains as fast as one track that is loaded to its maximum.

Mr. KENNEDY. That is, on the single tracks you can sidetrack your dead freight and give a clear road to the cattle trains.

Mr. MORSE. No; I do not mean to say that. I mean to say that on a single-track railroad handling half the stock, they would be able to make better time than a double-track railroad handling twice as much stock, provided the double-track railroad had other passenger trains in addition in the same ratio as the single-track road—twice as many. These passenger trains will block up and they have to pass them.

I do not know that there is anything more I have to say, gentlemen.

Mr. WANGER. We are very much obliged to you.

**STATEMENT OF W. L. PARK, GENERAL SUPERINTENDENT,  
UNION PACIFIC RAILROAD COMPANY, OMAHA, NEBR.**

Mr. PARK. I think, gentlemen, to save your time and to get at this quickly, I might give you a concrete case of the density of traffic and the impossibility of making 16 miles an hour net on a single-track railroad. These will be the actual conditions as they exist on one freight district of the Union Pacific Railroad, between North Platte and Sidney, 120 miles long.

We have scheduled on that district 2 fast mail trains, 3 overland limited trains, and a total of 18 mail and passenger trains. They are spread over the twenty-four hours, and you will observe that is an hour and fifteen minutes apart, if they are equally spread.

Mr. KNOWLAND. That is going both ways?

Mr. PARK. Yes, sir; there are 9 in each direction.

A stock train, under this proposed law, running 16 miles an hour would consume seven hours and thirty minutes. The train dispatcher, in order to protect himself and the road against the contingency of a delay occurring at the last end of the run, which might be caused by a hot box or something occurring to the engine, would need to establish a basic rate of 18 miles an hour. That is customary where you want to make a certain rate of speed. You will schedule the train a little bit faster to protect against a contingency at the end of the road, and, of course, having a fine or penalty staring you in the face, it would be done in this case. That would make your running time six hours and forty minutes.

Now, the federal law as to safety appliances requires a very rigid inspection of some 125 different parts of cars. We made on the Union Pacific a short time ago an actual test of how quickly that could be done, and 6 men employed consumed fifty-seven minutes and ten seconds in inspecting 8 cars. That for an average stock train of 32 cars would be three hours and forty-two minutes. Of course we do not make in that case the same rigid inspection. We, as I might say, sneak out of it and take our chances; but it would be fair to allow us at that district terminal, for changing the engine and caboose, this inspection, and the terminal delay naturally occurring there. That reduces your time to five hours and forty minutes.

Now, the American Railway Association is an organization that governs the practice of all the railroads in the United States. I think there are 230,000 miles of railroads represented in that organization. They have their own rule committees and other committees that prescribe good practices. That is very carefully gone over by other railroad officials in all parts of the country, and it centralizes in this American Railway Association. They say in order to operate a railroad safely, a freight train must clear a passenger train or a mail train a specified number of minutes.

If our stock train met only one-half of the passenger trains going over the road and let only one-half of them pass it, that would consume two hours and fifteen minutes, and you could very easily get a combination where they would meet a great many more trains than that, the passenger trains not being evenly spaced. That would reduce the time two hours and fifteen minutes, or three hours and twenty-five minutes on your schedule.

Then it would be very proper and necessary to allow twenty-five minutes for coal and water for the locomotive and a running inspection of the train which is made at the stations to see whether there are cracked wheels or other defects in the running equipment which might put the train in the ditch; and there under practically a minimum condition you have three hours actual running time on that 120-mile division, which is 40 miles an hour.

That is entirely too fast to run a freight train, and I think if such a rate of speed were attempted and maintained it would be injurious to the stock, particularly where you have a great many curves, throwing the cattle and sheep from one side of the car to the other and bruising them up.

On the Union Pacific we try to make an average of 20 miles an hour with our stock. We set that figure for our superintendents and dispatchers. We start at an elevation of about 4,000 feet at Ogden and ascend to 8,011 feet at Sherman, the summit of the Rocky Mountains. On that part of the road, which is about 500 miles, we prescribe a speed of 17 miles an hour. From Cheyenne to Omaha, on a descending grade, going down from 8,011 feet to about 1,000 feet, we prescribe a speed of about 23 miles an hour, which gives an average speed from Ogden to Omaha, which is approximately 1,000 miles, of 20 miles an hour; but it is impossible for us to make that time. We make it in a good many cases, and I could bring you a good many complimentary letters that we have received from stockmen of splendid runs that have been made. We do make some bad ones. We may have a combination of circumstances against us. It may be an opposing train, something the dispatcher could not foresee, a train in the opposite direction breaking down, and where he is handling a great many trains right up to the capacity of the railroad, before he can catch up with his work and readjust the schedule, this stock train may have suffered; and under such a law there could be no way we could explain that. We would simply have to accept the penalty. I have been connected with train service intimately, as a brakeman, conductor, assistant superintendent, superintendent, and general superintendent for thirty-five years, and I would be willing to stake my reputation, if I have any, as a railroad man that it would be utterly impossible to make a minimum net speed of 16 miles an hour.

Now, I think perhaps it would be entirely possible to make an average net speed throughout the entire season of 16 miles an hour. That might be possible. Some trains we would run 10 miles an hour under certain conditions. Others we might run 25 miles an hour; and I think it is quite probable that the figures thrown together for any of the roads would indicate an average of somewhere near 16 miles an hour.

Mr. STEVENS. Would it change conditions any—make you hurry up any—if we increased the penalties on you?

Mr. PARK. I think not, sir. I think we would just have to submit. The gentleman who just preceded me said they used every effort to get stock over the road. It is a preferred business with us. We have spent several hundred thousand dollars in the last ten years on the Union Pacific to provide special facilities in stock yards that are modern, up-to-date. We have spent \$40,000,000 to better our facilities in double tracks, sidetracks, and other facilities, all of which is in the direction of helping the stock trains; and our only complaints come from the congested main line and the single-track portions. I will say that we very promptly pay for any claims that we inadvertently or otherwise delay a train. There is no question about the settlement. The railroad company stands it. It is not the shipper. We have striven hard to avoid the penalties or to keep within the 28-hour law. I think since that law has been in vogue there have been fines imposed against the Union Pacific in 11 or 12 cases.

Mr. RICHARDSON. The stockmen are complaining more about the cattle suffering under the violation of the law which requires them to be unloaded every twenty-eight hours than they complained before, they say. Now, that is a fact. There is no doubt about that, because there is no provision made for any minimum rate of speed to be made, and you can run them twenty-eight hours and not go 10 miles. What suggestion have you to meet that complaint? That is a good complaint. The railroads are not required to make any particular rate of speed in order to reach a place where they can put the cattle off at the end of the twenty-eight hours. They can not keep them there longer than that unless special permission has been granted. How would you meet that defect, that complaint, and that trouble?

Mr. PARK. I think the 28-hour law has helped the railroads out of some difficulties.

Mr. RICHARDSON. And you put the cattlemen into others?

Mr. PARK. Yes. Out on the deserts of Wyoming we have some very poor water. At Laramie we purchased some 10,000 acres of grass land for the grazing of sheep, and we built the stock yards on the bank of the Laramie River. All of the stockmen made a special effort or request to get their shippers to that locality.

Mr. RICHARDSON. Under the 28-hour law?

Mr. PARK. Yes. If their man was at Rawlins, where there is practically no grazing, 118 miles east of Laramie, and he had six hours to go the 118 miles to Laramie, a choice place to unload, he would feel very much aggrieved unless we took him through. I think one or two of the cases where we confessed judgment and plead guilty were cases where in the middle of the night we were implored by the

stockmen to take them along to this particular station, Laramie, and we felt ourselves that it was humane and proper to take them to that locality rather than to try to get them out in the night, when it is difficult to unload them, and perhaps they would stand there at the stock yards until daylight before they could be unloaded, whereas by daylight we would have them at the favorite grazing ground, and they would unload easily. I am quite sure in those cases it was very much more humane to have gone an hour, perhaps, over the time and gotten them to that locality. I think one or two of these cases were occurrences of that kind. We confessed our guilt and paid the fine.

Mr. RICHARDSON. Would it occur often in the case of the transportation of stock in compliance with the law requiring you to unload them every twenty-eight hours that you would sometimes put them off at places that would be totally inconvenient and not prepared to take care of the stock?

Mr. PARK. When the law was first made effective, we had our disabilities in that particular, but we went at it very promptly, and at every one of our district terminals, 125 miles apart, approximately, we put in modern, up-to-date stock yards; but at such localities as Green River and Rawlins, on the desert, there is absolutely no grazing, nothing but sagebrush. We have good water. At Green River we have piped the water from the river to the yards, at a cost of fifteen or twenty thousand dollars. At Rawlins we have water piped 16 miles, from Fort Steele, at a cost of \$300,000. Of course, we use that for our locomotives, but that puts mountain water into the stock yards. Young lambs that are taken from their mothers and loaded on cars probably will not drink out of troughs in those localities. They will drink out of a running stream. The shippers handling stock that are so immature as the newly weaned lambs are of course anxious to get to a certain locality where they will drink; and if it is impossible to do that under the 28-hour law, I think it would be really inhuman to take them off before we got there.

Mr. RICHARDSON. Then the real situation is just about this, is it not, that now comes before the committee? The stockmen say, in effect, that the nonenforcement of the 28-hour law happens more than it ever happened before, and they come up and ask as a remedy for that that Congress, by this bill, prescribe a minimum rate of sixteen hours, so as to meet that. The railroad men say that is absolutely impossible, that it can not be done, physically nor otherwise, and that is about the situation.

Mr. PARK. That is the situation as I understand it.

Mr. RICHARDSON. That is the situation you bring to this committee?

Mr. PARK. Yes. I understand that the National Woolgrowers at Ogden indorse the sixteen-hour law. The Wyoming woolgrowers at Cheyenne had the same proposition presented to them, and they refused to indorse it, appreciating the impossibilities from the railroad view point. I understand also that while it was indorsed at Denver a year ago at the meeting of the National Stock Growers' Association, it was up again this year at a recent meeting, and they declined to indorse it.

Mr. RICHARDSON. Is it the humane society that is requiring this?

Mr. PARK. I understand the humane society have been brought into it, but I read the report of the hearings here, and Doctor Stillman's talk on Friday last, and I think he has not the right view point. Mr. McCabe, of the Agricultural Department, says he knows very little about it from a railroad view point, although his father is one of our pensioned engineers on the Union Pacific. He simply looks at it, I think, from a wrong view point.

Mr. WANGER. The American Cattle Association, at its annual meeting this year, adopted a resolution in behalf of conferring power on the Interstate Commerce Commission to determine a minimum rate of speed in moving live stock, did it not?

Mr. PARK. I understood that at Denver a year ago they had done that, but at the last convention, which was only two or three weeks ago, they did not. I may be mistaken about that.

Mr. WANGER. I think you are.

Mr. PARK. I may be. I know that one of the witnesses who appeared here on Friday is quoted in the hearing as having stated that such a resolution was passed in 1908. I presume from that that if one had been passed recently he would have referred to it.

Mr. KNOWLAND. You said you received several letters commending you for the expeditious manner in which cattle were handled. Have you received many complaints relative to delays?

Mr. PARK. We receive some complaints. We make some bad runs occasionally and receive some complaints. We always try to remedy them just as quickly as we can. We make the shipper good if he has lost anything on the market. We do not hesitate to straighten it out as quickly as possible. Complaints are not numerous. They seem to emanate from a particular class. I should say that they were those who bought stock and shipped them and sold on the other end. They are not the stock growers.

Mr. KNOWLAND. Speculators?

Mr. PARK. Yes, sir.

Mr. FAULKNER. How do the complaints compare with the number of shipments?

Mr. PARK. I have a telegram here from my office in reply to an inquiry by me. I left very suddenly at the request of the gentlemen in Washington, and I had no time to prepare for this hearing. The telegram says:

For the year ending June 30, 1909, the freight revenue from live-stock shipments amounted to \$2,534,000, or 7.67 per cent of total earnings. Of this, interstate shipments estimated about \$1,205,000, or 3.66 per cent of total earnings.

That means that the stock business of the Union Pacific road amounts to 3.66 per cent of all the freight business that we handle, and it shows quite clearly that to discriminate any more than we do now in favor of the stock would work an injustice to the large amount of business that, in a great many cases, is of equal importance.

I read here in the hearing the statement that fruit trains pass stock trains. That is not so. There might have been a disabled engine or some peculiar circumstance that would have caused a fruit train to go by a stock train, but as the gentlemen from the Milwaukee and the Northwestern roads have stated, and it applies to the Union Pacific, outside of mail and passenger trains, stock has the preferred movement. We very often endeavor to consolidate fruit and stock, because both are of a perishable nature, and run them on equally as

good time, but our stock trains move much faster than the fruit shipments.

Mr. WANGER. Mr. Gooding, of Idaho, stated to the committee that two years ago the distance from his place to Chicago was made in eight days, but that now it takes ten or twelve days to make the run.

Mr. PARK. I think that is a rather general statement. Four years ago I took an engine and one or two cars, and took Mr. Gooding and Mr. Nolan, of Chicago, a commission man, and one or two other stockmen—they were a committee of the National Wool Growers' Association—over the road for the express purpose of endeavoring to do something which in their opinion might help the situation—that is, to get the benefit of the opinion of these men as to what we should do on the Union Pacific to help matters. After going over the entire system, they saw our plans for the improvements in the stock yards and what we contemplated in the double tracking, and I believe it was their report that they could suggest nothing that was not being done on the Union Pacific. Upon the completion of these improvements they saw that they would have very little to complain of. We were out some two weeks.

Now, it is my impression that Mr. Gooding has had a very large number of good runs. He is a man that we generally look out for when he comes down over the road, because he always complains. He never misses an opportunity to complain, and if we can help it we do not lay him out, although I do not say we give him any particular preference over other shippers.

Mr. KENNEDY. You do not think it wise that we should attempt to fix any minimum rate of speed?

Mr. PARK. No; I think not. I think if the railroads are left unhampered and left to solve these problems as they are earnestly endeavoring to do, by double tracking, building additional yards, and facilities for handling the stock, the complaints will diminish in the West as they have in the East, where they have two, three, and four tracks upon which to operate the trains. The railroad building in the West has been very rapid. We have laid down a good many rails on contour lines and under conditions that were perhaps not the best; but the business necessities seemed to demand it, and we are now bettering those conditions. As I say, we have spent over \$40,000,000 on the Union Pacific, and the most of that between Omaha and Ogden on 1,000 miles, to better the conditions as they exist there. We have 40 per cent of it double tracked, and we have the rails and ties and all material ready to double-track the balance; but it is only a question of labor and our ability to work the steam shovels to get out the gravel when that will be accomplished.

Mr. KNOWLAND. You will double track the whole system?

Mr. PARK. From Omaha to Ogden; yes, sir.

Mr. KNOWLAND. That is as far as you run, is it not?

Mr. PARK. Yes. We have a line from Kansas City to Denver and from Denver to Cheyenne.

Mr. KNOWLAND. I mean west.

Mr. PARK. Yes; that is as far as we go west.

Mr. WANGER. Mr. Gooding said:

In the movement of stock from our western country down to the yards in Omaha the railroads have no competition; but at Omaha, where there is competition, our stock is transported from that point to Chicago at the rate of 20 miles, and yet on the Union Pacific they will drag on at 8 or 10 miles an hour.

Mr. PARK. He also stated further along in that hearing, I believe, that there was no double track between Chicago and Council Bluffs. The Northwestern is entirely double tracked. The Burlington is almost wholly so, and the Rock Island has a large amount of double track.

Mr. KNOWLAND. We have just heard that double tracking did not make any difference.

Mr. PARK. I did not state that. I think that Mr. Morse's point of view was that you could get so much business on a double track that you would have as much trouble as you perhaps ever did previously on a single track; but the same amount of business certainly can be handled much easier on a double track than it can on a single track. Is not that true, Mr. Morse?

Mr. MORSE. If you remember, my statement was that if a double-tracked railroad handles twice the traffic that a single-track railroad handles, the single-track railroad would get a train over the railroad faster than the double-track railroad, with twice the traffic.

Mr. KNOWLAND. They do not generally have the double track, though, without twice the traffic.

Mr. MORSE. No; that is what I said. They do not build the double track until they have the double traffic.

Mr. PARK. If the chairman will permit me, I would like to read some of the obstacles, other than those I have mentioned, that operate against the maintenance of the schedule. No. 1 would be temperature in mountain territory, cold weather; not extremely cold, but enough to slow up and make the wheels turn hard.

Mr. KNOWLAND. Is it more difficult to get up steam? I noticed, when I came east from California this year, we were about twenty-four hours late on the Overland Limited, and they claimed it was on account of the engine not being able to get up sufficient steam.

Mr. PARK. That perhaps was a boiler, or a mechanical failure, although I think there is more difficulty in maintaining the steam pressures at high altitudes than there would be in the low altitudes. At that time, perhaps, we had a temperature of 40° below zero at Green River.

Mr. KNOWLAND. It was very cold, I remember.

Mr. KENNEDY. Some one spoke a little while ago about engines moving less rapidly at night than in the daytime.

Mr. PARK. Well, that would depend on the engineer. I think, judging from our mail trains, where we get the highest speed, that the engineer sees less in the night time and perhaps runs faster than he would in the day time. His attention is not diverted. He is looking ahead. I have never noticed any difference except, perhaps, it might be in cold weather, when the temperature would fall very much during the night.

Mr. KENNEDY. A curious fact has been lately demonstrated in the manufacture of iron, that a blast furnace with the same fuel will make more iron in zero weather than in damp, warm weather. The moisture in the air seems to affect it.

Mr. PARK. No. 2 would be the heavy wind velocities, retarding opposing trains. That might be very difficult of explanation as to a particular stock train. The wind might be blowing from behind the stock train and still retarding it in that it would be holding trains moving in the opposite direction that would each, in their turn,

delay the stock train, but it would be a thing that would be almost impossible to account for from the train sheets later, where they might be looking for an explanation as to why the stock train lost ten or fifteen minutes at each one of these meeting points that it ought not to have lost.

The same thing would apply to minor accidents to opposing trains, causing unexpected delays to stock trains, brake beams coming down on a train, or hot boxes on the opposing trains.

We have this experience in the operation of the twenty-eight hour law as it is now. The consequent delays arising from trains in the opposite direction affect the stock trains in particular, but still we can not use that as an explanation, although it is there and we can not get away from it. The train is beyond the power of the dispatcher to give it further orders.

No. 4 is the failure of the telegraph line intermittently, causing delays in getting out train orders, caused by fogs, lightnings, and storms. That is very frequent. In the summer we have electrical disturbances in the high altitudes that will put our telegraphs out of commission for an hour or two, and it will perhaps come up again. We are installing a telephone, putting up two copper wires, through that territory from North Platte to Ogden, at a very considerable expense, a system of telephone train dispatching. We will have that completed in thirty days.

5. Failure of automatic electric signals, same causes as above, compelling trains to flag through blocks.

6. Drovers eating when trains would not be otherwise delayed.

7. Taking one or more cars to intermediate chutes to get stock up on their feet.

8. Rebilling at junction points with other lines.

9. Unloading part of a train for feed and rest, under the provisions of the present law, delaying balance of shipment that has time to go farther, causing numerous complications in adjusting the delays.

10. Waiting for drovers to get stock up on their feet while train is standing, and to get on the way car when the train is ready to move.

11. Speed restrictions of municipalities, some as low as 4 miles an hour.

12. Man failures—employees not responding to calls on account of sickness or for other reasons, causing unexpected delays in getting substitutes.

13. Stock trains bunching, delaying other trains at unloading points or getting through terminal yards.

There are a great many other delays of a similar nature that are bound to make the service erratic, indicating the folly of attempting to regulate the movement of stock by hard and fast rules.

These same climatic conditions affect the automatic electric signals, heavy lightning discharges or other climatic conditions putting the signals out of commission temporarily. I have seen signals that would hold a train ten or fifteen minutes. Under the rules the train stops at that signal and the brakeman goes ahead to flag and observe whether there is a train coming in the opposite direction and until he can see the next block so that it will be clear; and that signal immediately after that will resume its function, and nobody will know what caused it to stop.



Another cause of delay is drovers eating when the train would not be otherwise delayed. We find the drovers sometimes will at an intermediate station go over to the eating houses and get a warm meal there, and I presume they are justified in doing it; but we have to wait for them until they come back, and it might be thirty-five or forty minutes. Of course we could not explain that, and it would not be an excuse for not making this time, because we would probably be told to leave them there; but it would not do to leave them there, because they are necessary to keep the stock on its feet.

Mr. KENNEDY. When these complaints are made against you, does the commission have jurisdiction to excuse you from paying the fine?

Mr. PARK. Under the 28-hour law?

Mr. KENNEDY. Yes.

Mr. PARK. No, sir; I understand that those cases are all handled by the Agricultural Department inspectors, and they report violations to the Department of Justice, who bring the suits in the federal courts.

Mr. KENNEDY. If they report at all, then, there is nothing that justifies your failure to comply with the law?

Mr. PARK. We have our day in court. Inspectors of the Agricultural Department will find that we have exceeded the law, we will say, perhaps thirty minutes, some place. They have an inspector at each end of the district.

Mr. KENNEDY. They exercise some discretion as to whether to report at all or not?

Mr. PARK. Yes, sir; but if that law was literally obeyed, there could not a stock train move over a rail.

Mr. KENNEDY. I understand that.

Mr. PARK. Because it is not necessary for you to take the time from the time you put the first sheep on a train of, say, 35 cars you might have.

Mr. KENNEDY. You have been saying "That would not excuse us," as though there was vested somewhere a discretion to excuse you for failure to perform.

Mr. PARK. Well, I think that no one, perhaps, has the power to excuse the violation of the law; but they seem to have made rulings—some one has made rulings—and that is true of the instance I just cited. We are permitted to take the time from the time the last animal is in the train until the first one is out at the other point, the unloading point.

Mr. KENNEDY. It would make it easier for us to make some sort of workable law in this matter if there were somewhere vested power to hear your excuses and excuse you where you had a good excuse.

Mr. PARK. I think so. I think if that was possible that the law would work out much better for the shipper, the humane society, and the railroad. I think we could arrive at somebody in a certain territory with delegated authority to say, "that was right and proper; you should have taken those sheep over to this preferred water station, where they could get a drink, knowing that they would not drink out of the troughs where you did unload them, and that there was no grass there for them to eat." The inspectors would admit that that was a humane thing to do, and we would feel that it was a humane thing to do, and the stockman would be sure of it. But while the law is so rigid, it illustrates the unwisdom, I think, of mak-

ing a hard and fast rule. I fear that this proposed amendment would operate the same way; that we would be tied up more seriously than we are now, and I am very sincere in saying that we try to do the best possible with the stock trains, and I think all the railroads do that. This bugaboo about tonnage, there is nothing in it. We cut our tonnage to perhaps 50 per cent of capacity of the engine, to handle stock; but there is a time in the fall when it is absolutely necessary to haul as near a full train as we can in order to keep congestion from occurring on our road. It is a question of getting the business from the railroad, the very best business.

MR. KENNEDY. If the Interstate Commerce Commission, the parties to whom these complaints are made, could in some way be vested with the discretion and given judicial power to determine whether or not it was a wanton disregard of the law, or the failure of machinery that no foresight could anticipate—

MR. PARK. That is true of the safety-appliance law. I think it will be admitted by all railroad men that you could go out on any railroad and find these defects; but that law has been applied in a rational way, and the roads have been gradually getting better as to their care of such appliances, and they are touched up occasionally here and there to keep them in line. But I do not know what would happen if inspectors were put at every district terminal and kept there, and every violation of the law by the railroad was rigidly punished, because, as I said before, there are 125 parts in a car that come under the provisions of that law, and they are liable to work loose and fall off, and no human agency could keep them always in place.

MR. FAULKNER. I would like to ask the witness whether it is not true that the courts have held that so far even as safety-appliance laws are concerned, there is no discretionary power at all, and the law must be enforced if the report is made?

MR. KENNEDY. I understand that; but in the administration of the twenty-eight-hour law, have your cases been tried in the courts, or have you simply plead guilty and paid the penalties?

MR. PARK. Well, we opposed the application of the law in a case in Wyoming. We took exception to the law in that we were not willfully negligent. Our dispatcher was a citizen of Wyoming, we claimed had been there fifteen or twenty years, a man that was of good habits, and he was a good man, just as good as any other citizen of Wyoming. He had the duty of dispatching these trains, and by something which was beyond his control they went over the twenty-eight-hour limit. We claimed that that was not a willful act on his part; that he had exercised due diligence and foresight. Nevertheless, the train was on the road more than twenty-eight hours, and Judge Rider decided in our favor. That was taken to the Supreme Court, and I believe he was reversed.

MR. KENNEDY. Yes. Now, suppose that we should provide in this law that you might plead in mitigation of damages, if not in justification, any excuse that you might have for failure, and fix a reasonable minimum.

MR. PARK. Well, as I said before, I do not believe that a minimum would be necessary. I fail to understand how anybody can believe that the railroads are not trying to use this stock the best they know how.

Mr. KENNEDY. When passenger trains are frequently coming in, where no one suspects the company's genuine effort to get its passenger trains in on time, it is no unusual thing for a passenger train to be six or eight hours late. It may be unusual, but it happens on every road.

Mr. PARK. Yes; that is true, and there are innumerable reasons for that. A train may run on its schedule very uniformly for several months, and then have an epidemic of causes that would sacrifice the schedule; and that would be true of the stock trains. You might go along successfully and comply with this law for a long time, and then have an epidemic of trouble that would give you a lot of fines.

Another thing that has not been taken into consideration is repairs to the track. We frequently have broken rails, and repairing ballast, and slow orders; every railroad will have them sometimes, and they operate to slow the trains. But the work has got to be done. Then there will be seasons of the year when the track will be clear and there will be no work orders, and you can make better time under those conditions.

Mr. WANGER. What is your train schedule for stock trains on the main line?

Mr. PARK. The bulk of our stock runs during the three months of the year, August, September, and October, and the trains are not scheduled in the time-tables for the reason that we will have 10 or 15 stock trains one day and only 2 or 3 the next, and it would be impossible to handle them on a regular printed schedule; but the train dispatchers handle them as extras, the same as other freight trains, inferior only to the passengers. As I said at the opening of my remarks, on the Union Pacific we have set 17 miles an hour from Ogden to Cheyenne, and 23 miles an hour from Cheyenne to Omaha. Cheyenne is about half way, so that it makes an average of 20 miles an hour; but we are not able to make that. I presume our trains during the entire season would average somewhere around 15 or 16 miles an hour.

Mr. STAFFORD. What is the reason that makes this traffic exceptionally heavy during the three months you mention?

Mr. PARK. It is the range cattle. They have been held on the good grasses all the summer, and they are ready with the feeders of Nebraska and Iowa, and the grass is beginning to dry up so that they are loaded on the cars in the fall and taken to the feed lots; also, the sheep that they do not intend to hold over the winter of course they want to get rid of during the fall, and it is a grand rush, and if the railroad company could or would furnish the cars I sometimes think they would go out all the same day. It is their protection or salvation that we take some little time to get the cars back; and in that connection, on the Union Pacific 40 per cent of our stock car movement is empty movement, cars returning empty for the stock, and we get a little over 12 tons in a stock car, and our average for all cars is a little over 20 tons.

That is all that I have to offer.

Mr. FAULKNER. There is one more gentleman, who will not delay you by an argument, but who has some notes prepared that I would like him to file with the committee, if that is satisfactory.

Mr. WANGER. You may give them to the reporter.

**STATEMENT OF MR. D. E. SPANGLER, SUPERINTENDENT OF TRANSPORTATION, NORFOLK AND WESTERN RAILWAY, ROANOKE, VA.**

MR. SPANGLER. Mr. Chairman and gentlemen, I had prepared this memorandum from which I had expected to make some remarks, had time permitted, but if you will accept it in the way I have it here, I would like to file it as bearing in a general way on the line of the talks we have heard here from railroad representatives, and as illustrating some of the conditions under which our road operates. I would like to read from it this much. I stated in that memorandum that we are not a stock road in the sense that the western roads are stock-carrying roads. We originate quite a little live stock, cattle, and sheep, in southwest Virginia, and move it during the early fall months. October is our largest month. About 4,000 cars a year pass to the east from Roanoke. Last October the movement was something like 1,300 or 1,400 cars. To give an illustration to reflect our average conditions as to movement, I took a list of some trains we moved, beginning about the 15th of September, as being an example of our most favorable average conditions, having just passed away from the free-line movement at the beginning of the season and not having entered into the heavy movement of October, in which month we are in good shape to run solid trains of stock.

One train that I selected for detailed movement is a train leaving Roanoke on September 24, having 33 cars of live stock, which originated at 13 stations. This stock sustained at the loading point, before it got in the cars, delays running from twenty minutes up to about two hours and fifteen minutes, and in two cases it was four hours, and four hours and twenty-five minutes. Those two long-time cases were where stock was loaded in the early part of the evening, at about 7 o'clock, and could not move by the train, which the shipper knew was going to take it, until about 11 o'clock at night. That accounts for the long delay there. This stock, not counting the time lost at the starting point after being loaded, moved after being put in train to Roanoke at the average speed of 7 miles an hour up to a little over 12 miles. After they get to Roanoke, for the long run of 239 miles to Hagerstown, the gateway for the eastern markets, trains make fairly good time. It is a single-track railroad through a mountainous country, but its physical condition is away above the average, and good speed can be made, and fast time on some parts of it can be made. This train that I have in mind made a fraction over 19 miles an hour from the time it left Roanoke until it got to Shenandoah, the first division point. It was at Shenandoah an hour and fifteen minutes, changing engines, inspecting cars, and getting ready to proceed. From Shenandoah to Hagerstown the average speed from the time of starting until it arrived at destination was a little less than 19 miles an hour. To get that high speed between terminals after having encountered the delays of meeting trains, opposing trains, and the other incidents that are encountered in single-track movement, or in any train movement, the speed between stations where the grades were favorable to it varied from 17 miles to 35 miles an hour. I think this is a train that at one place made in the neighborhood of 40 miles an hour. I had looked at the movement of

another train, and I am not sure whether this was the one that made 40 miles an hour or not; but anyhow, they run those speeds there. After all that fast time, the average speed of this live stock, from the time it was loaded at the point of origin until its arrival at destination, excluding feed time, which is the only time that can be counted out as I understand it, under the proposed bill, varied from a little over 10 miles an hour to a little above 12 miles an hour. This was all 36-hour stock, with the exception of four cars, which were fed at Roanoke. I think what I have stated in connection with this table, with the memorandum which I have filed, will give a general idea of our conditions and the service we have to perform down there. It is noted in the memorandum that we have had no general complaints, except one which I would like to mention, and that is of getting to the market too soon in one case, which is unusual, and which we never heard of before; but we did have one suit brought against us, which was afterwards withdrawn, for having made too good time and getting to the destination before they were ready for us.

With respect to the regulation embodied stipulating on time, we feel that that must be used in a practical way in getting better service. There are often occasions, through exigencies, and particularly in short-haul movements, where a carrier, even though he is diligent and moves promptly, can not show over 4 or 5 or 6 miles an hour; so that if the present law, which we believe is efficient, will not reach these cases where some roads do impose on the shippers, I think some little quicker access to a tribunal can make people come up and perform reasonable service under the circumstances under which the stock moves, and that can make them perform reasonable service which will answer the purposes. I do not think any road can escape penalties under any stipulated number of miles per hour from the time the stock is loaded to the time it gets to its destination.

MEMORANDUM SUBMITTED BY MR. D. E. SPANGLER.

Coming at once to the question of reasonableness or justness, or practicability of the law or regulation requiring carriers to maintain the average speed of 16 miles per hour, or any stipulated speed per hour, reckoned from the time of loading to the time of delivery to consignee, or to connecting line, deducting only the time actually consumed in feeding en route, I wish to say that any railroad, unless it is so physically deficient from poverty, or otherwise, as to hazard the safety of the trains at such a speed can, without burden, maintain the speed of 12 or of 16 miles per hour between stations; but no road can maintain a freight service that will move all live stock at the average speed of 16, nor of 12, miles per hour from start to finish, however well equipped or diligent or foresighted it may be, or however fast it may run its freight trains, under the circumstances and conditions that surround the handling of live stock.

Representatives of railroads who handle live stock in volume, and which may be looked on as live-stock roads, have explained to the committee that there is no difficulty in running train-load lots at very high speed between stations, but even they, with the average speed pulled down by the slow movements incident to branch-line service, connecting with main-line movement, etc., are unable to maintain,

without failure in some instances, a stipulated rate of speed per hour from the point of origin to destination.

Representatives of other roads who handle only scattering shipments of live stock and only infrequently collect in one train more than a half-dozen cars, and branching off by minor side lines into sparsely settled territory, where train service is necessarily meager, have explained the absolute impracticability of maintaining in all cases even what might be ordinarily considered a very low stipulated average speed, counting out only the feeding time from the calculations.

But I speak for a road from the middle ground; that is, a line that is neither a stock-carrying road in the western sense, nor of the accidental kind.

Except rarely, our road handles no solid trains of live stock originating beyond its boundaries and traveling long distances. Our live-stock business consists principally of cattle and lambs raised in southwest Virginia, and originating at branch and main line stations—a map drawn of the layout would have the appearance of the hand with fingers extended.

Shipments come to these stations in lots of 1, 2, or 4, to 15 and 20 cars at a time. These cars must be joined at side junctions with main-line trains and held at Roanoke for consolidation into full trains for the through run to the northern gateways.

Although enabled to arrange movement layouts for connections with minimum delay and minimum feed stops ordinarily, by working closely with our shippers through the station agents, we sometimes fail owing to happenings to the several pick-up trains, or to the main-line trains, to make the connections with the customary minimum delay, but in the final round-up are able to perform a very satisfactory movement, but not fast.

The miles per hour reaching Roanoke, owing to the conditions and circumstances described, are very low; sometimes falling to 5, 6, or 8 miles per hour for the small lots first gathered up. From Roanoke to Hagerstown the average speed of the consolidated trains is much better, varying from 12 to 18, and sometimes reaching 20 miles per hour, depending upon the number of natural delays sustained meeting other trains and encountering the happenings that go with train movement. Some of these delays would be avoidable on a double track road, but many are unescapable on any railroad.

Counted against the proposed time allowed the carriers is the time consumed gathering in the shipments from branch or side lines and from way stations, oftentimes including station delays to live stock already in trains waiting for other shippers to finish loading theirs, and sometimes waiting on them to arrive at the stock pens; the unavoidable delay at junctions in connecting with main-line trains, detentions at terminal yards waiting for arrival of stock from converging districts for consolidation into stock trains or trains that can be and are run as preference trains, thus landing all the live stock at its ultimate destination with quicker dispatch and better and more comfortable handling than could possibly obtain if run in broken lots in miscellaneous trains, although among the cars in the consolidated fast train, there may be one, two, or several cars that, taken individually, would travel from the beginning to the end at less than the stipulated average speed, however low it may be; yet the through

movement and treatment of the stock would be more rapid and humane than could possibly be accomplished by broken dispatch on miscellaneous trains, merely to avoid delays in connecting at branch-line junction or in yards at consolidating points.

Well-meaning and well-managed roads, though mindful of their duties to the shipping public, and responding thereto, would be persecuted by any regulation requiring stipulated speed.

I believe reasonable service is all that could be expected or should be exacted, and what that service should be depends upon the circumstances and conditions surrounding the movement under consideration. This can be obtained under the existing law, or the offender made to pay heavy damages to the shipper, or pay the penalty for inhuman treatment of the live stock.

Damages have been awarded by the courts for movement of 10 miles average per hour made under conditions favorable to faster speed, and denied for a slower movement under conditions unfavorable to quicker time.

Movements in short-haul service under the stipulation of 5 miles per hour could not escape penalty.

We believe in the 36-hour extension at request of owner, who has the power to say whether his stock shall be confined over twenty-eight hours, and no road can wantonly abuse that limit without encountering serious trouble, and it ought.

As our road is circumstanced, the 36-hour limit enables our shippers to reach specified markets with greater regularity than under the 28-hour law; avoids unnecessary and hurried feeds at Roanoke; it takes the live stock to Hagerstown, the gateway for the East, in unbroken and humane movement; gives ample time for feed and rest there, which fits them for the final run to Philadelphia and New York on fast schedules—just long enough on cars to create the requisite thirst for a good fill before weighing at the sale, which is sought by all the sellers of live stock.

The cattle and sheep raisers in southwest Virginia, where grow the finest beef and mutton known, although not so extensively as on the western ranges, are well satisfied with the service performed by our railroad under the 36-hour law and other existing statutes, although we occasionally err and are brought to account for it, even so far as in one instance being sued for making too quick movement, claiming arrival in time for an off-market sale, which would not have occurred had the shipment moved more slowly. However, being in good repute with neighboring shippers they interceded in our behalf, and which, we suspect, accounts for the withdrawal of the suit.

If the N. and W. has disregarded the 36-hour limit in a single instance, I am not aware of it, and we have yet to learn of the first case of inhuman treatment of 36-hour live stock.

(Thereupon, at 4.15 o'clock p.m., the committee adjourned.)













# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING \*

## INTERSTATE COMMERCE

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### PART XIX

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman*.

IRVING P. WANGER, PENNSYLVANIA.

FREDERICK C. STEVENS, MINNESOTA.

JOHN J. ESCH, WISCONSIN.

CHARLES E. TOWNSEND, MICHIGAN.

JAMES KENNEDY, OHIO.

JOSEPH R. KNOWLAND, CALIFORNIA.

WILLIAM P. HUBBARD, WEST VIRGINIA.

JAMES M. MILLER, KANSAS.

WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.

CHARLES G. WASHBURN, MASSACHUSETTS.

WILLIAM C. ADAMSON, GEORGIA.

WILLIAM RICHARDSON, ALABAMA.

CHARLES L. BARTLETT, GEORGIA.

GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Tuesday, February 15, 1910.*

Mr. FAULKNER. Mr. Chairman, there is an important witness here who has written out his statement. He is from the Atchison, Topeka and Santa Fe road. He has to leave on the train at half past 5 o'clock, and he asks permission to file his statement.

Mr. WANGER. Very well; hand it to the reporter and it will appear in the hearing.

### STATEMENT OF C. W. KOUNS, GENERAL MANAGER WESTERN LINES ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.

Mr. KOUNS. My name is C. W. Kouns, general manager western lines Atchison, Topeka and Santa Fe Railroad Company. My headquarters are at Amarillo, Tex.

(The paper prepared by Mr. Kouns is as follows:)

FEBRUARY 15, 1910.

HON. JAMES R. MANN, *Chairman.*

SIR: I desire to file with your committee the following objections to the enactment into law of the bill H. R. 19041, which has for its main object a compulsory rate of speed, fixed at a minimum of 16 miles per hour, to govern the movement of all trains carrying five or more cars of stock.

Such a law, if enacted, would be impossible of enforcement, because upon a very large part of the railway mileage the conditions about the handling of stock traffic are such that it would be physically impossible to maintain the speed between terminals without running at a reckless and dangerous rate over much intervening territory. In my judgment such a fixed speed limit would many times require that rates of 40 or 50 miles an hour, or even higher rates, be reached, in order to preserve the minimum required by the provisions of this bill. It will readily be appreciated that upon roads with varying gradients and the curvatures which are common to most lines movements of that character could not be other than injurious to animals so handled. I apprehend that many claims resulting from injuries are due to excessive speed made under present arrangements for moving stock.

In the western territory, with which I am familiar, stock moves in very large quantities during two periods of each year—approximately from March until June, and September to November. During these periods the service provided is principally special and is arranged for the express purpose of caring for these movements in a way which best serves the purpose of the interests controlling that traffic. That

it is expensive goes without saying, because such trains run one way light, or comparatively light, and the obligation upon our part to accept and move live stock in any quantity from one car to five hundred compels the movement of many trains with but few cars for long distances. If these special trains, or, for that matter, any other trains carrying stock, are inspected and tested at each terminal, as required by existing laws, and the usual and necessary stops for water, fuel, and the waiting and passing of other trains is added, and this time is deducted from the running time with that lost in ascending grades, it will be easily understood that under ordinary and normal conditions the intermediate speed must vary. We have certain districts where the grades and traffic density permit of an average speed of 20 miles per hour, and we make that speed, and on other sections conditions make half that average impossible. Many trains are scheduled to load and pick up small lots of stock upon branch and main lines, and these trains, while usually run at high speed, can not make an average speed of more than 8 or 10 miles per hour.

On one such schedule in operation on our lines the terminal delivery has been uniformly on time, incidentally the number of cars or the loading of the train, has not much exceeded one-half the capacity of the power used, and in many instances not one-quarter of it.

During a visit among patrons using this train I was told by many shippers the service was all they could desire.

The humane idea running through this bill, and which has, indirectly, the support of many good people, would be better served if it were more particularly inquired into. As common carriers we may not pass upon the physical characteristics of the animals offered for shipment. We must accept those tendered whether they are in physical condition to stand the journey proposed, or any journey. The results many times are disastrous to the animals and to the railroads who are their involuntary guardians and responsible for certain values attached to them. It is a well-known fact that stock in immense quantities has been taken from ranges where both food and water were inadequate to their proper support and tendered and turned over to railroads for long movements. In one such instance I recall that bill of lading for one carload was surrendered within the first twenty-eight-hour period, the animals having died en route from sheer weakness due to lack of nourishment. Stock in such condition could never withstand the motion incident to high speed without great discomfort and physical deterioration, which, of course, comes with it, and financial loss.

I do not find in the bill that it is proposed to increase the rate to be charged for the extraordinary speed demanded, although costs of every description would be immeasurably increased.

However, since the speed proposed is impossible from any reasonable point of view, I will not enter upon that phase of the question.

Very respectfully,

C. W. KOUNS,  
*General Manager Western Lines,  
Atchison, Topeka and Santa Fe.*

N. B.—I beg to attach a telegram from Mr. J. E. Hurley, General Manager Eastern Lines, showing percentage of arrivals at various market points before opening hours of the markets. K.



TOPEKA, KANS., *February 15, 1910.*

C. W. Kouns,

*Care New Willard Hotel, Washington, D. C.:*

Your wire not received until 8.30 this morning. Taking first week in February, all stock arrived Kansas City, St. Joe, and Chicago in time for market day of arrival. At Chicago, 60 per cent in time for early market; at Kansas City, 79 per cent; St. Joe, 54 per cent. This is fair criterion of our general handling.

J. E. HURLEY.

WEDNESDAY, FEBRUARY 16, 1910.

The committee this day met at 10 a. m., Hon. William H. Stafford presiding.

**STATEMENT OF MR. THOMAS F. BARRETT, OF PHILADELPHIA, PA., PRESIDENT OF THE PHILIPSBURG AND SUSQUEHANNA VALLEY RAILROAD.**

Mr. BARRETT. Mr. Chairman and gentlemen of the committee, through the courtesy of your chairman I received in the mail printed statements of the record of the hearings had before you prior to this time. So far as I have been able to go through them and make an examination of them, I find that there have been two persons so far here to present objections to that feature of the bill which is under consideration and which seeks to confer upon the Interstate Commerce Commission power to regulate the issuance of stocks and bonds. I find that the ground in other matters has been pretty well covered, but this particular feature of the bill does not seem to have interested the railroad corporations so much as other features. But it is of peculiar interest to us because of the fact, for instance, take the case of my own—

Mr. BARTLETT. Are you discussing the corporation bill or the interstate commerce bill?

Mr. BARRETT. I have before me House bill 17536, introduced by Mr. Townsend; a bill, No. 16312, introduced by Mr. Mann; and I also have here for the purpose of reference a Senate bill introduced by Mr. Elkins which follows the same lines as the Townsend bill in the House.

Mr. BARTLETT. The Townsend bill is what we call the "administration bill."

Mr. BARRETT. If that is the view, Mr. Bartlett, then I am discussing the second paragraph of section 9 of the Townsend bill and paragraph 13 of the Mann bill.

I want to say, gentlemen, at the outset, in order that I may be properly understood, that I am in favor of reasonable regulation of corporations engaged in interstate commerce. I think the principle is a correct one. I believe, however, that you are seeking to do something in this bill which you have no constitutional right to do, and a thing which I believe you should not undertake to do for another purpose. I believe it is in accordance with the genius and the spirit of the institutions of this country that the separate States shall be allowed, so far as possible, or entirely, I should say, rather, to regulate their own internal affairs in their own way, without the interference of the Federal Government. For a corporation, however, engaged in interstate commerce, or a railroad corporation whose lines extend across several States, it is very apparent that it becomes

impossible for the state authorities to reach a corporation of that character in such a way as to exercise effective control over its affairs, and that such a corporation, untrammelled by any act or regulation of commerce, may go on and do things that are detrimental to the interests of the people of the country and which should be made unlawful.

This feature of the bill which I am discussing covers a subject which has already been regulated by most of the various States of the Union, and in some instances they have gone so far in the attempt to regulate that subject and have imposed such restrictions that it has practically resulted in the destruction of new railroad enterprises in those particular States. I refer, for example, to the State of New York, with which I happen to be familiar because I have in my control or organization some railroad properties in New York State. On July 1, 1907, the law creating the public-service commission in that State went into effect. Previous to that time there had been what you might call a great debauch in railroad enterprise in New York State. Millions of dollars' worth of stocks and bonds had been issued against what was purely blue sky and not supported by any substantial value. The result was that there was a wild clamor throughout the State and throughout the other States of the Union; in fact, that was an object lesson for the entire country, for the passage of a law that would regulate and prevent just such things as happened in New York State in the Metropolitan Street Railway and allied companies. The people of the State of New York, when Governor Hughes first ran for governor, in 1906, were practically a unit in favor of the passage of that bill. It was passed. It is a rather strenuous bill in its terms. The public-service commission, in the second district, was appointed. The second district comprises all that part of New York State outside of the city of Greater New York, and the policy of the commission in that district has been such, coupled with the operation of that law, that it has practically brought to a standstill railroad construction and the organization of new railroad enterprises in the State of New York.

I have a letter now from the chairman of the public-service commission, a few days old, in which he tells me that there is but one application now pending before the public-service commission for the second district, which, as I said, comprises all of the State of New York outside of the city of Greater New York, for what they call a certificate of public convenience and necessity, which the law requires a railroad corporation must have before it can perform any public acts. This application is for the Buffalo, Rochester and Eastern Railroad, which has once been denied by the public-service commission.

Mr. BARTLETT. I don't want to break the thread of your argument, but I would like to understand what you mean by that. I am not familiar with the New York statutes. You say that there has been but one application to do what?

Mr. BARRETT. I will explain that. There is but one application now pending before the commission of the second district, which comprises all of the State of New York outside of the city of Greater New York, for a certificate of public convenience and necessity. The law which I have referred to, in New York State, as having taken effect July 1, 1907, provides that a railroad corporation in that

State, whether it is to be operated by steam or electric power, must secure from the public-service commission what they call a "certificate of public convenience and necessity" before it can do any other corporate act. That certificate of public convenience and necessity is a prerequisite before the corporation can do anything except to file its application for a charter. The public-service commission, following the spirit of the times, adopted a very conservative policy in the matter of issuing stocks and bonds. They proposed as a matter of policy of the commission what you propose to enact into law in the second paragraph of section 9 of the Mann bill, that no railroad corporation might under their direction issue any stocks and bonds excepting upon the simultaneous payment in by such corporation of the par value in cash, or property of the cash value of the par value, of the certificates or bonds to be issued.

MR. ADAMSON. Without recognizing for a moment the power of Congress to have anything to say what a local corporation shall do, isn't it right that when you organize a corporation and issue stock, that you shall receive as much money as the stock shows in the treasury?

MR. BARRETT. It is right that you shall have enough money in the treasury of the corporation to carry on the purposes for which it was organized.

MR. ADAMSON. But isn't it right that when you organize as an artificial person to do business with the world, holding out that it is a \$100,000 corporation, that there shall have been that much assets put into the corporation to be represented by stock?

MR. BARRETT. I can not subscribe to that as a sound principle in business affairs generally, but if it is applied to a railroad corporation by law there is no reason why it should not be applied to all sorts of corporations.

MR. ADAMSON. The corporation may take a good note from a man, and that is an asset if it is a good note. Now, beyond that, while I utterly deny that it is any business of Congress to fool with that, I think you have a right, having formed an organization and issued that much paid-up stock, to get all the credit you can from selling bonds to any amount, and it is no business of Congress or anybody else how much credit you secure.

MR. BARRETT. I agree with you as to that last statement.

MR. STAFFORD. Is there not this distinction between a public-service corporation and other corporations in which you claim that there should be no distinction that a public-service corporation is regarded as a quasi public corporation whose affairs should be supervised by the Government under which they are doing business?

MR. BARRETT. That is a fact.

MR. ADAMSON. But there is not a word in the Constitution—the Constitution authorizes Congress to regulate commerce, and under that provision of the Constitution we can look into the practices and rates charged by people engaged in interstate commerce. But if you are going to talk about how much a fellow shall be worth, and how he shall raise his money, and what credit he shall have, then you might as well undertake to say what kind of a coat he shall wear, and there would be just as much sense in it.

MR. BARRETT. That is correct, and I subscribe to that.

MR. STAFFORD. But the witness thinks that there is no reason for the Government exercising any supervision over railroads or any other corporation.

Mr. ADAMSON. There is a fair distinction between what the Government may learn about a corporation, what it is doing, its practices, and so on—that is, the Government may get information of what that corporation is doing in order to fix how much rate it should charge.

Mr. BARRETT. In order that I may have my views expressed here, I want to say that this distinction may be made between a railroad corporation and other corporations generally: A railroad corporation enjoys certain public franchises; that is, an electric railroad would have to build its lines upon the highway or through the streets of a municipality, and that would make it somewhat of a distinctive quasi public corporation because it enjoys distinctive privileges granted to it by the municipalities through which it runs. That situation hardly applies to the steam railroad, because it is constructed entirely upon a private right of way, it owns its own property—that is, it operates altogether, practically, upon its own property, and enjoys no franchise privileges from the State or municipality excepting the charter which it obtains from the State.

Mr. STAFFORD. Railroad corporations are granted privileges which are not granted to the ordinary corporation, are they not?

Mr. BARRETT. It is quite true that railroad corporations have certain obligations imposed upon them as common carriers, but I do not see where a railroad corporation receives any privileges of a business character which result to its advantage over any other class of corporations.

Mr. BARTLETT. It occurs to me—I don't want to interrupt the thread of your argument or suggest what line you shall pursue—but it occurs to me that the constitutional question which I apprehend is going to be raised ought not to be mixed up with any proposition that Congress has not a right, or the State, or authority—the sovereign—the right to regulate a railroad corporation, or what you call a public-service corporation, which has been granted a charter not simply to carry on business; but to exercise a part of the functions of a sovereign in that it can condemn the property for its right of way and charge tolls. That question has all been thrashed out both in England and in this country, and I thought that even the railroad men had come to the conclusion, which you opened your argument with, that they conceded the right of Congress to regulate interstate commerce and thereby regulate the practices and rights of railroads; but you are going to contend that it did not have the right to regulate the issuance of stock, and I thought, of course, that the issuance of stock becomes a matter of commerce or regulation of commerce.

Mr. BARRETT. That is exactly what I have in my memorandum.

Mr. BARTLETT. I beg your pardon for interrupting you.

Mr. BARRETT. But I was answering the various suggestions made by members of the committee.

Mr. ADAMSON. A State may grant a charter to do a great many things that Congress can not interfere with under the provision to regulate interstate commerce.

Mr. BARRETT. I don't believe that the Federal Government has any right or power to regulate the issuance of stocks and bonds of railroad corporations. I think that they have a right to regulate every act which is in its character interstate. A railroad corporation draws its corporate powers from its charter, issued under the laws of the State, including what Mr. Bartlett refers to as the right

of eminent domain and the taking of private property where needed. Now, if that is true, it does not seem to me that it was one of the powers conferred upon the Federal Government in the Constitution that it should extend its arm inside the boundaries of a State and take away from that State the right to regulate its affairs as it sees fit.

Mr. BARTLETT. Which is regulation by police powers.

Mr. BARRETT. That is right. There are certain police powers exercised by the Federal Government all over the country, which is a principle to which we must submit, but there is a wide distinction between the exercise of ordinary police powers and the taking out of the hands of the people in the several States the right of incorporating their railroads and limiting the amount of stocks and bonds that they may issue.

Mr. ADAMSON. The Federal Government can have nothing on earth to do with that police power, and it can only regulate the practices and rates of interstate transportation.

Mr. BARRETT. I mean the broader interpretation of the police powers, to carry on the functions of the Government in the execution of any administrative powers or functions which the Government sees fit and which is in a general sense covered by that expression. Of course there is a wide distinction between police powers and an execution issued, and things of that sort.

As I find myself more in accordance with the views of the committee than I expected to when I came here, I will go on with my argument.

Mr. BARTLETT. Do not take that for granted, because there happens to be here a minority of the committee who seem to agree with you.

Mr. BARRETT. I mean the members of the committee present, and upon these constitutional questions only. My principal object in appearing before you gentlemen is to call your attention, leaving out the constitutional question, to what I believe would be an injustice, if this feature of these various bills should become a law, upon railroads located wholly within the limits and boundaries of the State. I subscribe wholly to the view that the Federal Government has no power to exercise supervision over railroad lines that are wholly located within the boundaries of the State, excepting so far as such railroads may in their interchange of traffic with other carriers do certain acts of interstate commerce. Say if a railroad in Pennsylvania takes a carload of lumber to New York City, lumber which originates on its line, carries it to the connecting carrier, and they take it on to New York City; I think that, gentlemen, is a joint act which is interstate.

Mr. STAFFORD. Are the provisions of the New York statutes limiting the authority to issue stocks and bonds the same as the provisions of this bill?

Mr. BARRETT. No, sir; the New York statute, which is referred to commonly as the public utilities act of New York, does not place any limit upon the issue of stocks and bonds which may be made by a corporation. It simply confers upon the commission discretionary powers, and the mortgage securing the bonds must be approved and the amount of stock which may be issued by the company must be approved by the commission before they are legally issued.

Mr. BARTLETT. That is the same as we have in Georgia.

Mr. BARRETT. It is a discretionary power of the commission.

Mr. STAFFORD. Are you acquainted with the provision in the Massachusetts statute?

Mr. BARRETT. I am, in a general way. We have never had any experience in that State in railroad construction and organization, and therefore I have only a general knowledge of it.

Mr. STAFFORD. It has been represented that their provision has worked satisfactorily as to the building and protecting of public utilities.

Mr. BARRETT. That is not my understanding. The law has been very detrimental, as I understand it, in Massachusetts, to the building of new railroads. Of course Massachusetts is a small State, and it is pretty well developed as it is, but without having anything at hand to support my views upon this subject outside of information which I have gotten together from common hearsay, I would say that my understanding is that the State of Massachusetts has recently, as an inducement to the construction and building of new railroads or public-service corporations, through its commission, made a ruling allowing such corporation to issue an amount of stock in addition to or in excess of cost of construction of the road, which would be purely water, to the amount of 50 per cent, I believe, of the cost of the property. I am not familiar with the law of Massachusetts, but I think perhaps that the power there may be discretionary as to what the commission may do.

Mr. PETERS. Have you a more specific reference to that ruling?

Mr. BARRETT. I have not. I was going on to say that it was simply a matter of hearsay, and I am not prepared with documentary evidence to offer. The public-service corporations of Massachusetts, I know from general knowledge, have not developed, have not progressed, nor been as successful as they have been in some other States. A few years ago there was more reorganization of street railroads in the State of Massachusetts, I understand, than most any other section of the country. The commission had limited public-service corporations in the matter of issuing of stocks and bonds so closely that they were unable to get out sufficient amounts of capital to give their companies a good, lusty, healthy growth. That is a matter of general knowledge which comes to me from being engaged in the business, rather than being supported by proof.

Mr. PETERS. Excuse me, but why wouldn't that tend to prevent the reorganization if the amount is limited?

Mr. BARRETT. That is the unfortunate view taken by persons who are not thoroughly acquainted with the practical workings of railroad organization. One of the worst things that can happen to a railroad corporation is not to be able to grow; not to have such elasticity to its growth as to be able to use its securities and its machinery when demand requires it.

Mr. ADAMSON. For your own safety, I feel it my duty to inform you that the Member who has been addressing you comes from Massachusetts, and you may be on dangerous ground.

Mr. BARRETT. I appreciate the interest that he takes in the subject. When I referred to the State of Massachusetts, I surmised that he was particularly interested in that Commonwealth. However, this is a fact; the public-service commissions, such as exist in New York State, Massachusetts, Texas, and elsewhere, are usually

composed of men who are not practical railroad men, and unfortunately in harmony with a great percentage of the population of the country. They assume their position very often with the same amount of prejudice that a good many other individuals entertain against railroad corporations and the methods of railroad men. Understand we have been very much abused in the public press in the last few years, caused by doing some very bad things, so that it often occurs that inexperienced men who serve upon commissions of that character do not understand, they have no intimate knowledge of the principles involved in the work carried on, and are liable to arbitrarily exercise a power which they consider for the public good and the good of the corporation, but which often develops things that are very destructive.

Now, it has not been a good thing for the State of New York nor the people of New York that they secured the passage of the bill which they call the public utilities act, because railroad construction in the State of New York, railroad extension and railroad development generally, outside of improvements made by the existing railroad lines in increasing equipment and so forth, has practically been stopped. It is not to the interest of the people of a State to stop their internal development, the strangling of that which would increase their prosperity. There are in the State of New York, outside of New York City, millions of dollars invested every year in railroad securities, but that is being sent into Canada and to the other States of the Union for investment where things are more liberal; from New York State to Central and South America and to Mexico. It is fair to assume that the increase of public service utilities in that State would induce considerable of that capital to remain at home and be invested in a way which would result in the formation of such corporations as would be of great value to the State, but that has been greatly retarded by the effect of the law governing the policy of the commission.

Not long ago, if we take what the newspapers say, and if the newspapers accurately express what took place, a committee of citizens from a locality in northern New York visited Mr. President Thomas, of the Lehigh Valley Railroad, with the request that he induce a company to construct an extension of their road through their locality, and the answer which they received was—I have a memorandum of it here—to the effect that investors will not put their money into any venture where they are not to make over 5 or 6 per cent, and where they are more likely to get a much smaller return, or none at all. The reason given was that it was easy for them to find a more inviting field for their capital, and I think that expresses a literal truth.

Take, for instance, the operation of this law, leaving out the constitutional questions, and let us ask if the Federal Government has a right to go inside of the boundaries of a State and undertake to assist in regulating the internal affairs of that State, and if it has a right to limit the amount of stocks and bonds which even a railroad whose lines are located wholly in that State may issue and are not controlled by the interstate-commerce law.

Now, let us take the State of Tennessee, for example. It is desired by the citizens of a certain locality in one portion of the State, in order that they may improve that section of the State where there may be considerable coal, oil, or lumber, or a section that may adapt itself readily

to agricultural development if opened up, to get together and organize themselves into a company, make their survey, adopt a location, and have all the features of their construction of the railroad properly figured out, and they go out to the outside world with their prospectus for the purpose of attracting capital to enter into the enterprise. They say to the man whom they are trying to interest: "This is a good enterprise; it opens up a large section of our State teeming with natural wealth which should be developed, and we want you to come along and put your money in and help develop that part of our State."

"Well," he says, "but I can only get 5 or 6 per cent upon my investment if I put my money in there." He says: "If I join with you in this work of developing that part of your State, then I take considerable risk—a great speculative risk—and I am not willing to do that; I am not willing to invest my capital, let it go down into your State and be handled by your local people, for merely 6 per cent upon my investment," or whatever the rate of income may be. "I can loan my money upon a mortgage, or I can invest in a fixed annuity or some other form of investment where I know it is safe."

Now, let us follow that example a little further and take another view of that case. Suppose this railroad has financed itself and has been constructed and you have opened up that section of the State. The construction of the railroad has attracted settlers, the opening up of the coal mines and the manufacture of lumber and the development of agricultural lands have practically developed that section, and that is followed by a general enhancement of the values of real estate and of everything. Is it right that the men who put their money into the corporation, who took the risk involved in the building of that railroad, should not be permitted to participate in the enhancement of values which has followed and the development which has been caused by their grit and courage in coming in there and making that investment and in opening up that section of the country? Take, for instance, a town site laid out by speculators, and a bank has been established there. In the beginning the bank was a small affair, and the stock probably was not worth par value; but in the course of a few years the stock has doubled in value because of the increase in returns; then I say that likewise the same principle may be applied to a dry goods store that might be located there, or anything of that kind. I contend that it is fair to say that a man who has the grit and enterprise to take the initiative and to risk his capital and make those investments profitable should be permitted to participate in the enhancement which follows.

MR. KENNEDY. The argument is to keep him from taking it all, by simply adding to his stock, which practically represented the growth in all the country—by adding that much to his stock every now and then.

MR. BARRETT. I was discussing the case of one small railroad. In order to go into the matter along the lines which you suggest, I will say that perhaps that railroad in the course of time, if it succeeds, will extend itself 50 miles farther, and after a while it will extend itself another 50 miles, and after a while it will become a trunk line, when, of course, it becomes reasonably the subject of interstate regulation; but I do not think that Congress has the power to regulate the issuance of stocks and bonds. I think that is a power inherent in the sovereignty which granted the charter and under which its life was



given. I think, however, it has the power to regulate rates and all other acts of interstate commerce.

Mr. KENNEDY. There is another theory that is set forth in some of the decisions, that a railroad is a mere public highway, and that one of the ways a public builds a highway is to grant a contract upon the part of the public with a corporation; and after it shall have built a public highway between designated points—a specified public highway—shall have the right to take a reasonable toll over that highway to compensate it for doing the public work. That is one idea of the railroad that has been supported by very respectable authority, the supreme court of the State of Pennsylvania, in the case in which Jeremiah S. Black announced the decision back in 1856. Now, if that be the correct idea of the railroad, it is manifestly very important that there should not be water put into the stock of the railroads, if the public's contract with the corporation in building that road be, as he defined it in that case, an agreement that the corporation should hold control of the highway forever, taking a reasonable compensatory toll forever to compensate them for building the road.

Mr. MILLER. But another court has taken a contrary view, however.

Mr. KENNEDY. There has no court held to the contrary, that I know of.

Mr. BARRETT. Yet I don't believe that that covers exactly the question of the lawful right of the General Government to exercise this supervision over stocks and bonds.

Mr. KENNEDY. Here is another feature: If the National Legislature had never asserted their right to regulate a railroad wholly within a State, so that that question has never yet been before the courts, as I understand it, we have limited what we have attempted to do by not attempting to regulate railroads wholly in a State.

Mr. ADAMSON. I am not aware that the courts have ever held that the regulation of commerce carried with it the authority of the Federal Government to go into all of the States and prescribe how and what stocks and bonds a local corporation shall issue.

Mr. BARRETT. That is a view that I heartily subscribe to.

Mr. ADAMSON. They may get information about watered stock, and they may fix rates accordingly, but it is not necessary for them to undertake to run those corporations in order that they may know just how much the rates ought to be.

Mr. BARRETT. I have a reason for referring to the subject of the railroad located wholly within the boundaries of a State. I find in part 11 of the hearings a question that was propounded by Mr. Richardson to Mr. Byrne, of New York, as to what effect the passage of this act would probably have upon railroads located wholly within the boundaries of a State.

Mr. RICHARDSON. And carry out the provisions of the charter granted to them by the State, both as to reorganization and consolidation—how do you answer that question?

Mr. BARRETT. I answer that I don't believe that the Federal Government has any right, under the spirit of our institutions, or any constitutional right, to invade the territory of a State and to interfere in any way with the regulation of its internal affairs.

Mr. RICHARDSON. But does it not go further than that? If a charter, as you know very well, no doubt, can not be granted by the Federal Government for any purpose, can States grant those charters?

Mr. KENNEDY. That is a question.

Mr. RICHARDSON. If the railroads comply with the charters granted, and the charters give them authority to effect a reorganization or to consolidate, and that reorganization or consolidation does not take place until the Federal Government has issued a charter to that railroad, wouldn't it be a fraud upon the stockholders and the bondholders because it would null their property and defeat their purpose?

Mr. BARRETT. I think it undoubtedly would be as you suggest, but you suggest rather a charter being granted by the National Government to a railroad.

Mr. RICHARDSON. You know that the President of the United States is setting forth that as his desire, but we do not say that it is going to be done.

Mr. BARRETT. I did not understand that the President had made any recommendation with respect to the National Government issuing charters to railroad companies.

Mr. RICHARDSON. Well, the Attorney-General of the United States—it is a public matter, and the bill has been introduced.

Mr. BARRETT. I don't think it is good policy, and I do not believe it is good law. There has been a great discussion upon that subject in the earlier history of the country.

Mr. RICHARDSON. And that goes very strongly toward the consolidation of this Government.

Mr. BARRETT. Yes, it has a centralizing tendency which ought to be checked now rather than allowed to go further on, and I do not mean that as a criticism of the policy of the administration, and it does not refer to the President's message or to any of his recommendations. It is simply an individual opinion of mine that we all like to hold and once in a while express. But the question of the right of the General Government to issue charters to any sort of corporation, even a national bank, as you will remember, was one of the questions that was very warmly contested in the early history of the country.

Mr. BARTLETT. And some of us have the idea that they haven't the right yet.

Mr. BARRETT. It was not intended by the framers of the Constitution to confer that right. I think anyone who reads impartially will agree.

Mr. KENNEDY. It would not be a stretch of our ideas of right to suppose that under the power to regulate commerce the National Government would have the power to regulate the building of a highway to facilitate commerce in a State. Is the building of a highway an interference with the internal affairs of a State within our National Constitution exclusively?

Mr. BARRETT. I think that in answering that question that the difference must be more clearly defined between a railroad and an ordinary highway. I suppose that that suggestion has some reference to the clause of the Constitution which gives the Government authority over highways and post-roads, but there is a great difference between a highway as it was known in those days when the Constitution was framed and before we had railroads, and the railroad corporation of to-day. While it is quasi public in its character, it is really private property in its ownership.

Mr. KENNEDY. In my judgment there is nothing private about it. All the directors of a railroad and all the stockholders behind them have no right to use it as private property.

Mr. BARRETT. I mean private property in the sense that it is privately owned.

Mr. KENNEDY. It is held as a mere naked trust for the public.

Mr. ADAMSON. That is true; but the jurisdiction of the trust is another question. It is in trust for the public, but under the formation of this Government a local government can look after those things. While I am not squeamish, and I am not going to call out an army to defend the doctrine of state rights, yet I do not believe that we should overburden the General Government by giving our attention to those things that we have no right or duty to attend to.

Mr. RICHARDSON. The railroads are quasi public property, and it has never been defined otherwise.

Mr. BARRETT. I think the directors or the trustees of a railroad corporation are, as the gentleman suggested, invested with a trust which represents the stockholders and the bondholders of the corporation, and that the stockholders and the bondholders of that corporation are the owners of that private corporation which exercises quasi public functions as a carrier of freight, passengers, and so forth, and it is properly and only a trust subject to special statutes which define its duties as a common carrier.

Now, I do not want to take up an unreasonable amount of your time, but what properly brings me before you is this: The property under my control, at least that which I have general control over, would be injuriously affected by this statute in this way: The bill does not expressly except, as it should, from its operation railroad lines located wholly within the boundaries of a State, and on that account it leaves, as has already been developed here in this discussion and in the various hearings before you, a question as to how far the Interstate Commerce Commission might go under this bill in seeking to regulate the affairs of those corporations located wholly within the boundaries of a State.

Mr. RICHARDSON. I do not agree with you. I do not think there is any apprehension about this law being confined to any common carrier commencing in a State and ending in a State, and having no interstate commerce. Surely this committee or Congress would not undertake to do such a thing as that, and I do not think there should be any apprehension about that.

Mr. BARRETT. I should be glad if the committee would take that view of it.

Mr. RICHARDSON. I don't think there is any question about the committee taking that view of it.

Mr. BARRETT. That distinction is clear in the minds of all who have discussed this bill, and the thing which I would like to see cleared up is that there is a distinction. I notice in the Elkins bill that that bill does expressly except from its operations electric street railroads, electric lines, and I see no reason why it should not be so expressed here.

Mr. RICHARDSON. I believe this committee does not except the electric lines from this bill, the taking of them out.

Mr. BARRETT. It seems to me that it should except small railroads, for otherwise there may be a cloud. We have at this time the refinancing of a number of railroad corporations that come into—

Mr. KENNEDY. Do you think that by excluding electric lines we would go against the rule in regard to classes?

Mr. BARRETT. I think, if I understand the object of this bill, it is to reach interstate carriers only.

Mr. KENNEDY. Suppose the carrier now operates with one class of power, and that is electricity in place of steam, would that be a proper classification?

Mr. BARRETT. That would not create a classification.

Mr. KENNEDY. Then we could not except them.

Mr. BARRETT. Not if they are in interstate, because the question of steam, electricity, or the mule does not fix their character; they are railroads engaged in interstate commerce nevertheless.

Mr. KENNEDY. We could not, under the guise of simply designating which should be affected, exclude on any such classification as that.

Mr. BARRETT. No, sir; because many of the larger railroad corporations now have under consideration the electrification of their lines, and a part of them at least extend over the boundaries of the State—they take off the steam power and they take on the electric power. So that does not change the business which they transact. But I think that this bill, in order to clean up that situation, in order that we may go on without a cloud hanging over us, should expressly except from its operations electric lines, and steam railroads located wholly within the boundaries of a state.

Mr. MILLER. And not engaged in interstate commerce?

Mr. BARRETT. Not engaged in interstate commerce excepting in their joint character as common carriers. As I stated awhile ago, if my railroad in Pennsylvania takes a carload of lumber, and another carrier takes it at a connecting point and carries it on to New York City, that is an act of interstate commerce, but it is only incidental to the exercise of its general business.

Mr. MILLER. But where can you draw the line of exception?

Mr. BARRETT. By applying this bill directly to the transactions which are interstate in their character; for instance, if a carload of lumber is shipped from a point on my railroad to the city of Philadelphia, that is intrastate transportation, and does not in any way involve the question of interstate transportation. On the other hand, if we contract to carry freight or passengers outside of the limits of our State upon a joint contract made with the other carriers with which we connect, then to that extent it is interstate commerce, and there is a distinction which I think is perfectly plain.

Mr. KENNEDY. We had before our committee, I think on yesterday, some gentlemen who wanted the law to provide that railroads wholly within a State should have the right to have joint rates made with steam railroads, so that they could compel, through the Interstate Commerce Commission, the formation of collections with other lines of railroad.

Mr. BARRETT. If that was so, that would become a subject of interstate commerce, and the commission would probably have jurisdiction over it, but a small railroad located wholly within the boundaries of a State has a sort of double character in that capacity.

Mr. KENNEDY. Could it enter into a joint rate without becoming an interstate carrier, if the roads with which it contracts or arranges a joint rate crosses the state lines?

Mr. BARRETT. It could do so without becoming an instrument of interstate commerce, excepting in so far as that particular contract is concerned. There are other contracts of a similar character.

Mr. KENNEDY. Its character, in your judgment, would change every time it had something on it to go out of the State?

Mr. BARRETT. I think that if a crime is committed on the high seas within 3 miles of land that it might properly be a crime punishable by the federal authorities, whereas if it occurred wholly within the boundaries of a State it would be entirely different, and the difference is in the time of the transaction.

Mr. KENNEDY. But we are driving along in the dark if the character of this road is not determined by every transaction or every shipment over it. This, it is true, has not been before the courts in exactly the shape we are now discussing, but don't you think that the courts will hold that its character is determined by what it is available for, rather than what it is actually doing at any particular time?

Mr. BARRETT. Taking that view of it, then, it is available for two purposes, for intrastate commerce or interstate commerce, as the contract which it makes requires; it has a dual capacity. In its contract with the other carriers, where they make a joint rate to points out of the State, it would be doing an act of interstate commerce. In all its other relations and respects it is properly under the supervision of the Interstate Commerce Commission so far as its interstate contracts are concerned, and properly outside of the jurisdiction of that commission so far as its intrastate business is concerned.

Mr. KENNEDY. Oh, but as to its financing, if it comes within the category of interstate carriers, why should it be excepted from any rule that we should make here?

Mr. BARRETT. Because of its being incorporated under the laws of a separate State. I contend that the right to issue stock and bonds is an inherent power under its charter granted by the State, and which power can be given or taken away only by the authority under which it was created; and therefore that the Federal Government has no legal power under which it could take hold of that company as a purely local corporation inside of the boundaries of a State and interfere with that State in its regulation of its own internal affairs by saying how much that railroad may issue in the way of bonds and stocks, when it is incorporated and derives its life and powers under the laws of that State. If it seeks to do a general interstate-commerce business, and has its lines beyond the boundaries of the State, then it takes on the character of an interstate-commerce enterprise, and is properly subject to the jurisdiction of Congress and the Interstate Commerce Commission and other federal authorities.

Mr. BARTLETT. Of course you are familiar with the decisions of the court in what we call the "employer's liability act." As I recall, it is there decided that it is not within the power of Congress in the exercise of its power and authority under the commerce clause of the Constitution to regulate the recovery of an employee, the manner in which that recovery should be applied, and to whom it should go, that being a matter not of commerce but state law. Isn't that rather similar to the provision that you are discussing here?

Mr. BARRETT. There is some similarity.

Mr. BARTLETT. Here, while Congress has the power to regulate interstate commerce, and in the exercise of that power can prescribe

that they shall not charge more than reasonable rates and shall not engage in practices which are detrimental to the public in carrying on interstate business, yet when you come to the internal affairs of a corporation and when you come to prescribe who shall recover and the manner of recovery and the payment, and the persons to whom the recovery shall be paid, is there not a great deal of similarity between the two cases?

Mr. BARRETT. There is considerable similarity; yes.

Gentlemen of the committee, my object in coming before you was to discuss more particularly the business features and the results of the practical operation of this law, rather than its legal and constitutional features. Two years ago I used to try to make a good living in the practice of law, but there has been so much of the administrative part of this work given to me in the past two years that my time is all taken up with practical questions, and I don't have much time to devote to legal study, although I have kept pretty closely in touch. It has been somewhat of an interesting study to follow them up, yet at the same time the object for which I came here, which I had in mind, was to try to make it plain to you, as a man who has something to do with the practical affairs of organization and building of railroads, who now has under his control some enterprises of that character, that the operation of this bill would be a great hardship to the people in various States who want new railroads constructed and want their States developed. I think, in order to get the matter down to a concrete proposition, conceding that the Federal Government has the power to regulate the issuance of stocks and bonds of interstate railroads, which they do not do, but conceding that for the sake of argument, if that is a fact, then the power lodged in the commission should be of a discretionary character, and this bill should not be mandatory upon that subject.

Mr. KENNEDY. There is a discretion given to them in the selling of the bonds. They have a discretion as to what price the bonds should sell for.

Mr. BARRETT. If you will pardon me for expressing a view upon this matter, I will say that I think the prices of stocks and bonds, like all other commodities the world over, are regulated upon their intrinsic value and upon the law of supply and demand.

Mr. KENNEDY. But in doing this act they are doing more than that; they are saying whether there should be a railroad built at all, and I think that is just as important as anything else. I think somewhere there should be a right to regulate a railroad; somewhere there should be some one to say, "This is not required; you shall not go ahead and issue a lot of stock and swell the tolls for after generations in building a railroad where it is not needed."

Mr. BARRETT. I agree to some extent with the views of the gentleman, but not altogether. I stated sometime ago my personal belief that all corporations engaged in interstate commerce ought to be subject to a reasonable governmental regulation. I think the regulation proposed by this bill, from what the gentleman suggests, would be extremely unreasonable. I do not believe that the people of this country have any great desire to place in the hands of a commission at Washington the power to do such things as the gentleman suggests. I do not believe that the people of Texas, California, or Oregon, with vast sections of country undeveloped, desire to have themselves

placed in a position where they must come down to Washington, or send representatives, to seek the authority of a government commission before they can go on and use their own capital to develop their own section of the country.

Mr. KENNEDY. I think you are right about that, that the public sort of look upon the situation with regret that they feel that they have to do it on account of the things that have been done.

Mr. BARRETT. Ah, that is just the point that we want to get at, and the point that we want to get before the committee. There is no distinction, as I said in the beginning of my argument, and before the gentleman came in, made in this bill between the class of railroad corporations already in operation, already constructed, already earning sufficient money to pay interest on its bonds and to pay its dividends, and those new corporations that are yet to be constructed, and financed, and built to develop those sections of the country where development is much needed. The trunk lines of the country whose stocks are selling at par or way above par are not in any way oppressed by this feature of this bill. If they are only required to pay 50 cents a dollar on the stock, it is a perfectly easy matter for them to issue all the stock they want. But you can not sell stock of a new railroad for par, or anything like it.

I will prepare a written statement to file with the committee in concrete form; but in following up that thought, if a new railroad is to be constructed, and it is provided in the operation of this law to pay in 100 cents on the dollar, the par value of the stock, then you will never be able to sell that stock, and in that way you have destroyed the initiative and gone a long way toward the destruction of that enterprise, and you have placed in the hands of the railroads already existing an absolute monopoly of the railroad business. They can finance every necessity, because they are strong, lusty, and able to do it, but they are not prepared to build these extensions, for there is not a trunk line in the Union to-day that is not compelled to spend millions and millions of dollars in increasing their facilities, extending their lines, and keeping up with the growing demands of business upon their lines. Therefore the latent resources of the country, the outlying districts, will wait for many years for the development of their sections. On the other hand, if you do not take away all inducement and utterly destroy these new enterprises, you tie their hands, as they have in New York State, and you stop railroad development and you check the progress of the country. Capital will even go to Canada, and it is going there now, and millions of dollars are being put in other sections of the world where the laws respecting investments of this character are more liberal.

Mr. PETERS. Do you think that the enactment of the antistock-watering laws offers any protection to investors?

Mr. BARRETT. I do not think so. I think it will result in harm to the country and the tying of the hands of the people who would go ahead and invest their money and would cause others to invest their money. I think it is a hardship, and for the reason that I stated a while ago when I instanced an imaginary railroad in Tennessee. If a railroad is to be built to cost \$25,000 a mile, and it will cost that, and if that company shall issue \$15,000 of stock also, which would be \$40,000 per mile altogether, and \$15,000 of that is pure water given as an inducement to risk capital in the enterprise, which the

capital takes that goes into that enterprise in the beginning and makes possible the success of the road, I think it is just and reasonable. I think, of course, that there should be some regulation. I do not think a corporation, new or old, should be permitted to go on and issue stock without regulation; but I think discretionary power should be contained in this bill instead of a mandatory power, and that the Interstate Commerce Commission in the exercise of its power under this bill should give a reasonable leeway to new enterprises in order that there may be an inducement for the attraction of capital in the way of profit in the construction of the railroad itself.

Mr. PETERS. You referred to the Massachusetts situation. The Massachusetts antistock-watering laws were passed in 1894, and you are probably aware that Massachusetts has as great street-railway mileage as any State in the Union, next to New York. They were largely constructed under those antistock-watering laws after 1894. Have you any explanation of that?

Mr. BARRETT. I have no explanation of it, because I have had no particular experience with railroad matters in Massachusetts; but it is a fact that I have been advised by hearsay that street railroads in the State of Massachusetts, a large number of them, went through the reorganization because they were so closely limited in the matter of issuing stocks and bonds that they didn't have sufficient leeway to finance their requirements, and therefore they were unable to do that which they might have done under other conditions to protect themselves. Whether that is an actual fact or not the gentleman knows better than I do. But they were reported as a very large number of the street-railway organizations in the State of Massachusetts, and I am personally aware of a good many of them myself.

Mr. PETERS. Can you name one or two?

Mr. BARRETT. I could not name any corporation. I remember, however, that one of the firms of my own city, Philadelphia, was largely engaged in the construction of electric lines about Boston, and that all of their roads got into the hands of receivers; and I have a distinct recollection in my mind of hearing that subject very fully discussed. But, as I said some time ago, I have nothing to support that excepting mere hearsay.

Mr. PETERS. I should differ with you so far as that is concerned. There have been very few reorganizations under the Massachusetts law; the suburban street roads have paid better and are paying better.

Mr. BARRETT. As I said, it is merely a matter of hearsay, and I am not in a position to support it with documentary evidence or otherwise.

I am sorry to have to state to you, gentlemen, that it is my opinion, based upon the experience I have had in matters of this character, that the result of the passage of a bill containing the clause set forth in the second paragraph of section 9, H. R. 17536, would be to stop the construction of new railroads and do a great injustice to the holders of securities of roads that are being reorganized.

I do not want to be misunderstood, however. Personally, I am in favor of reasonable federal control of corporations engaged in interstate commerce. The difficulty I find in this legislation is that it makes no distinction between roads that are now in operation and on a substantial earning basis, and the stocks of which in most cases are selling equal to or for more than par, and those that are yet to



be organized and built or reorganized and financed. If this section of the bill becomes law the best rate of income that can be obtained by persons engaged in the business of organizing and building railroads would be possibly 5 or 6 per cent on their investment, providing such investment yields any income at all for several years, which in the case of new railroads has seldom been true.

But this is only one of the serious obstacles which this bill, if it becomes a law, would place in the way of new railroad building.

To illustrate what would be necessary in order to meet the requirements of this bill, let us take up a hypothetical case. Say a railroad is to be incorporated in the State of Tennessee, which is a State that has a large amount of mineral, lumber, and agricultural lands yet to be developed and which development can only be carried on by the building of new railroads. The length of the projected line, we will say, is 50 miles. It is to be built for the purpose of opening up timber and coal lands and a section of country that will likewise adapt itself readily to agricultural pursuits. The individuals interested, desiring to put their coal and lumber on the market and to open up the tributary country to development, conceive the idea of building a railroad. The first step they take is to execute such papers as are necessary to obtain from the State a charter for the company; they proceed to have surveys made and to adopt a location for the railroad line through the section of the country where it is desired to build it. The next step is to find a contractor to do the work of building and a proper medium through which to sell the stocks or bonds of the company, or at least such portion as are not subscribed for by individuals who take the lead in the enterprise.

At this point I want to call your attention to the fact that the initial steps in new railroad construction, in 99 cases out of 100, are taken by persons in the locality where the railroad is to be constructed, and they are prompted to go ahead with the enterprise because they feel the need of railroad facilities. To meet the requirements of this bill, the individuals proposing to organize such company would be compelled to employ a lawyer to prepare and file with the Interstate Commerce Commission a petition setting forth and describing what was proposed to be done, and asking consent of the commission to the issuance of stocks and bonds, etc. It would be necessary to send this lawyer, at great expense, to Washington, where he would have to remain, no telling how long, until he could get a hearing and present the matter to the commission. It would likewise be necessary for them to send their engineers, with maps and other proofs, carefully made up, as to the cost of construction, etc. After the commission had acted on the matter, if the decision was adverse, an appeal could be taken to the court of commerce; and after the court of commerce had rendered its decision, if it was still adverse, it could then be heard by the Supreme Court of the United States. Perhaps, after a lapse of two or three years, a final decision would be rendered. During all these years, the individuals who desired to go on with the new railroad would be without means of knowing what they would ultimately be permitted to do. If, in the meantime, any person, organization, or other railroad company antagonistic to the new project desired to defeat the application before the commission or in the courts ample room would be found in the conditions which would arise to give them the opportunity to try to do so, thus prolonging and making more

expensive the effort on the part of the local citizens to build their railroad.

Therefore I unhesitatingly say to you that the obstructions placed in the way of this new railroad project by the bill now pending before you would be so expensive, so cumbersome, so obnoxious to the spirit of local enterprise that in most cases it would never be undertaken.

What is true of a section of Tennessee to which I have referred is true in many parts of the other States of the Union, especially all that part of the country outside of New England. It will be found that the people of the various localities where new railroad construction is needed to serve public convenience and necessity would rather go without the advantages which would accrue than undergo the red-tape proceedings and heavy expenses required by the conditions which would arise in the administration of this law.

And who will be benefited by thus strangling new railroads?

It may seem a strange fact, but, notwithstanding, it is a well established one, that the trunk lines to a very great extent discourage the building of new railroads, and this, to the mind inexperienced in railroad matters, seems all the more strange because it would appear that the trunk lines would be benefited by the building of smaller railroads, which would serve as feeders and bring them traffic. The larger railroads, however, are aware that the small road of to-day, which may be, perhaps, 50 miles in length, after it is developed and doing a prosperous business, may be extended 50 miles more and thus reach another trunk line connection; so that the road which is to-day a short line may gradually develop itself into a larger enterprise by making other extensions and connections, and ultimately develop into a trunk line itself; and this is what the existing railroads, out of their desire to hold the business they have, discourage.

Every railroad having its terminus in a large center of population, or the lines of which traverse developed sections of the country, desires as far as possible to fasten its control upon the traffic of that country. They not only discourage the building of steam railroads, but up to the present they have refused to make any track connections with, or to enter into agreements to interchange traffic with, any railroads operated by electric power.

If an example is needed of what the result will be of the passage of this bill containing the section, which I am discussing, it is unnecessary to look further than the State of New York. On July 1, 1907, the law creating the public-service commissions in that State went into effect. The policy of the commission for the second district, which embraces all of the State outside of Greater New York, has been a very conservative one in the matter of permitting railroads, whether new enterprises or those already established, to issue stocks and bonds for any purpose whatever. The effect of the law, coupled with the policy of the commission, is that new railroad construction in the State of New York has practically come to an end. I have before me a letter from the chairman of the public-service commission of the second district, in which he states that there is but one new application now pending before the commission by a new railroad company for what is termed "a certificate of public convenience and necessity."

There are in New York State many localities which sorely feel the need for new electric and steam railroads to serve the increasing

population and development of the State, yet the conditions imposed by this law and the restrictions added by the policy of the commission in respect to the privilege of issuing stocks and bonds are such that the initial enterprise necessary to start a new railroad project has been effectually destroyed. In some localities of New York State citizens have prepared petitions to be presented to, or have appointed committees to visit, the officials of existing railroads to ask them to build certain extensions of their roads and in every case have received little or no encouragement. In one instance, if the newspapers accurately report what took place, a committee of citizens in northern New York visited President Thomas, of the Lehigh Valley Railroad, and asked him to have his company construct an extension of his road through their locality. The answer they are reported to have received was that "investors will not put their money into any venture where they are sure not to make over 5 or 6 per cent, and where they are more likely to get a much smaller return, or none at all. It is too easy for them to find more inviting fields for their capital."

New York is a State of great wealth, her people are investing millions of capital annually in securities of railroad enterprises in other States where laws respecting investments are more liberal. Other millions are being invested in Canada, Mexico, Central and South America. At least much of this money would remain at home for local railroad development were it not for the existing policy of the State upon this subject.

An investment in a new railroad enterprise is hardly similar to any other kind of investment you might think of, for the reason that it is pretty generally understood, and should always be understood, by those who contract to purchase the bonds and stock of a new railroad that they must wait the development of the railroad's business for any profit which they expect to make.

I stated a few moments ago a hypothetical case of a railroad in Tennessee. Take that as an example again. From the time the individuals who took the initial steps to incorporate themselves into a company, and secured from the State a charter, until their railroad is actually completed and a track connection is made with a trunk line and the new road is engaged in the interchange of business (if the contours of the country are such through which the railroad runs that they offer no unusual obstruction to railroad building), it would be from two to three years before traffic would be regularly passed over that 50 miles of railroad. The successive steps to be taken, as I said before, would be to incorporate the company, then to make the surveys, adopt a location, comply with the laws of the State in that respect, have the surveys or location cross-sectioned, the quantities of material necessary to be moved ascertained, the size and cost of bridges estimated, the masonry calculated, and the necessary contracts placed for the material. All of this would consume, perhaps, the greater portion of a year, possibly more, before it was properly worked out. At the end of that time the grading of the line would probably be begun. This, with track laying, masonry, etc., would consume the greater portion of another year. Getting the equipment on the ground, getting the coal mines and sawmills in operation, and starting up the agricultural developments along the line of the railroad, so that actual

shipments in any quantity would be made, would consume more than another year. Altogether it would be at least five years from the time the projectors of the railroad took the initial steps until the railroad corporation was really engaged in earning money. Necessarily, the development of its business must be slow, because it must wait to start manufacturing, mining, and other enterprises, and to attract settlers who will improve the farms contiguous to the line and who will ship farm and dairy products, etc. It must wait until the farming element has so far developed that the incoming freights from fertilizers, agricultural implements, and farm supplies generally amount to a considerable item. It must wait until additional coal mines are opened up, perhaps coke ovens built, additional sawmills or manufactories are established. Yet all this time the capital which takes the initial risk and the grit and enterprise which promoted the construction of this particular railroad must wait for its rewards until the company has developed a sufficient business to pay, or until, by the slow process of the development of the section of the country through which this line is located, there has been such an enhancement of its business and, therefore, of its value as to create some profit. Now, suppose the individuals who have this enterprise in view and who want to put it through are limited, as they are in this bill, in issuing stock and bonds to the amount of the actual cash which is invested in this enterprise; where do they get any income upon their money during the three or four years that the railroad is being constructed and equipped and connected for business? Where do they get any income upon their investment during the lean years that the company is building up a business?

A railroad company is no exception to the general rule which applies to a dry goods business, a manufacturing business, or a banking business, in that it must establish itself, get ready to do business, and then, by the usual process of attracting trade, develop and build itself up until its business is a success.

This situation has been honestly overcome and fairly met in almost all instances that have come under my observation by the privilege, which is accorded under the laws which now exist, of issuing a reasonable amount of bonds and stock which may be given to the investors who first put their money into the enterprise as a bonus or reward to them for the risk which they take and for the time during which they wait for the enterprise to develop a paying business.

I do not want to be understood as saying that every new railroad that is constructed must wait a long number of years before its business begins to pay. I do want to be understood as saying, however, that in the great majority of cases, I would say three-fourths of the new railroads which are constructed do not pay for many years after they are constructed and put into operation. The objection which is made to issuing a reasonable amount of watered stock as a reward for the enterprise and as compensation for the risk taken by those who make the initial investment, is not founded upon a knowledge of the situation and a regard for the application of just principles to a business transaction. Such objection is more generally made by people who do not understand the nature of the business and who believe that every railroad enterprise, just because it is built and operated as a railroad, has some peculiar attributes about it that

makes it practically a gold mine, so far as its owners are concerned. Yet the very reverse of this is the truth. It is impossible to conceive of a business which is in many respects much more risky or hazardous. So many things can happen to a new railroad enterprise that will cut off its opportunity of income that the man who invests his money in its securities must necessarily do it with the knowledge that he is taking more or less risk as to the exact amount which will ever be returned to him.

And yet, why is this objection made to the pioneer who goes in and risks his capital in a new railroad and who assumes the labor and responsibility that is necessary? Let us look the situation squarely in the face and go back to our imaginary railroad in Tennessee. Here is, prospectively, a rich section of that State which is to be opened by this new railroad. We will assume the project is carried out, the railroad has been built, and that that section of the State has been opened up to settlers for development. Here in one locality we find coal lands have been opened, lumber mills have been started, a town site has been laid off, and a prosperous business community has sprung up. An association of individuals, feeling the necessity of having a bank, purchased a corner lot at the inception of the town, we will say, put up a brick building, and established a bank in it. When they first put up the building it was not worth what it cost, because the state of development at that time did not justify such an improvement. But with the lapse of time the town site has continued to attract settlers. In their proper order the butcher, the baker, the candlestick maker, have arrived; the doctor and the lawyer and the minister and all the other kinds of trade and business and professions which usually go into the enterprising town are now represented; the population has doubled itself several times. The corner building, where the bank is located, is worth five times as much as it was the day it was built; and why? Because with the growth of the community there has been a general enhancement of all kinds of property.

Here is a man located 5 miles from town along the line of this new railroad. He owned a farm of a thousand acres. The building of the railroad attracted settlers, and he has sold off three-quarters of his farm and only had 250 acres left. He sold for a good price, and the 250 acres left, which remains his home farm, is worth more money to-day, several times over, than before the railroad was built.

Some one has put down an oil or gas well; the opening of the coal mines has attracted a large number of employees; towns and villages are growing up along the railroad, and a general development of that section is going on. The people who made the initial investment and took the risk and put their money into the railroad enterprise made the whole situation possible, and is it right that they, too, should not be allowed to participate in the increase of values which has followed the general prosperity made possible through their enterprise and money? I say that such an objection is unfair and unwise and not founded upon an intelligent knowledge of the situation.

Take another situation. Suppose that this oil, or natural gas, or coal was not discovered in the earlier history of this railroad. Suppose the railroad, after struggling along for several years, should not pay the interest on its bonds which were purchased at the time the railroad was built. After successive defaults the bondholders became impatient and the bonds have been deposited with a bank under a

plan of reorganization which is about to take place. Would it be just to the people who had put their money in that project originally to have the Interstate Commerce Commission say, "Your property only cost so much, the stock and bonds originally given as a premium for your grit and enterprise in undertaking this transaction, which, perhaps, was not more than reasonable compensation for your risk, will not be allowed to be reissued to you. We will only allow you to issue a certain amount of stock and bonds, and upon that amount you can have an income of 5 or 6 per cent?"

You will find that, under the operation of this bill, when the people of the various States who desire to develop different sections of the State (as in the instance of the hypothetical case cited) go out into the business world to find capital for an enterprise in which that capital is bound to take grave speculative risks before it can establish its position, the opportunity for ultimate profit must be sufficiently large, sufficiently attractive, to induce the investment, or, otherwise, it will not be made. A man of sound judgment who is approached with a proposition to put his money into such an enterprise would very justly say that if he risks his money in such a corporation and can not make more than 5 or 6 per cent upon the investment, he will prefer to loan it on real-estate mortgage, or invest it in an annuity, or in some other form of fixed investment that would be absolutely safe, and where he would have no worry and no trouble concerning it.

When this condition of affairs arises how are you going to raise the capital to float a new railroad enterprise in undeveloped sections of the country? If you are allowed to put no water in the stock, if you are allowed to make no concessions whatever to the original investors who take the risk, where are you going to find the bankers or associations of individuals who will take the risk and advance the money?

Take it on the other hand and suppose that you issue \$20,000 of bonds per mile and \$20,000 of stock per mile for the original railroad enterprise. The road may not have cost to construct it over \$25,000 a mile; therefore \$15,000 of the capitalization represents pure water, or a margin on the investment. But the railroad, in course of time, is completed. If it turns out fortunate, settlers pour into the section, develop the country, and, after a reasonable time, it becomes a paying enterprise. What was originally given as a bonus and would ordinarily be called water now commands, by reason of the earnings of the property and the enhancement of its physical value, a fair price in the market. What right have we, who did not participate in the initial risk, who had no part in the enterprise, energy, and nerve which put this deal through, to now take the position that no interest shall be paid or no dividends granted on what was originally a bonus or watered stock? The people who owned the land, the coal, the lumber, the oil, the gas, the other mineral rights, the agricultural lands which waited for development and which they could not sell, were eager enough to have that railroad put through, to have somebody take the risk of investing the capital and take the time and trouble of building. They have made money in consequence of what has been done. Can they now justly say that the men who made all that possible, by the investment of their capital, shall not have the same proportionate reward that they themselves are seeking?

I do not want to stand in the position of saying that all loose capitalization of these enterprises can be justified in this way. I take the opposite view. I say that there should be a just and reasonable regulation, but the regulation as to small railroads whose lines lie entirely within the boundaries of a State should be regulated by the state authorities. I do not subscribe to the principle that the Federal Government should undertake to extend its jurisdiction within the boundaries of the State and take away from that State the exclusive right to regulate, as the people of that State see fit, its own internal affairs. A different proposition arises when a railroad is extended across a state line, because then it becomes an instrument of interstate commerce and properly comes within the direct control of the Federal Government; or, as a local line wholly within the boundaries of the State, some features of its business should properly be controlled by the Government. For instance, if the railroad line of which I have the honor to be the executive head should ship a carload of coal, as we frequently do, from the coal fields of Pennsylvania to the tide water at Perth Amboy, N. J., it is perfectly proper that such shipment should be under the jurisdiction of the federal authorities, because it is an act of interstate commerce, and can not be entirely regulated by the laws of any one State, for the transaction begins in one State and ends in another.

But the part of the railroad business which is interstate and the part which is intrastate should be distinguished between, and in this way: The building of a railroad line which is entirely independent of the control and management of, and is nowise identified with, an interstate railroad can in no way, in my opinion, become the object of concern to the federal authorities. It will not do to say that the evident purpose of this railroad is to do acts which are interstate commerce, because the railroad may do acts which are interstate commerce, and it will undoubtedly do acts which are not interstate commerce. For instance, if my railroad ships a carload of lumber from a point on its line to Philadelphia, the transaction is wholly within the boundaries of the State, and is not, in any way, an act of interstate commerce, so in that matter the Government should have no concern. You might as well say of the Baldwin Locomotive Works, which builds engines which operate over our railroad, that the building of the engine is an act of interstate commerce and should not cost only so much money, or should be supervised in some way, because it is an instrument which, when completed, will be used as an agency of interstate commerce. Likewise, you might as well say that the car builders who build cars that operate over our railroad are engaged in interstate commerce, because they are building cars that will be used by our road to haul carloads of merchandise from points on our road to points in other States, and therefore they are engaged in interstate commerce. If such car-building plants should desire to issue new stock and bonds, should they be required to comply with those laws? If the Baldwin Locomotive Works desires to extend its business, must it be required to comply with this special provision? If I want to build a railroad 25 or 30 miles long to serve the convenience and the necessity of the public in a certain locality of my State, must I be required to comply with the law? Would it not be an unwarranted interference with the internal affairs of the State?

Another condition, however, will arise. What is said here of a railroad whose lines are located wholly within the State will also be true of new railroads, the lines of which cross a state line. I have in mind now a project which is under my control for the time being and which will unite four or five lines of railroad not more than 200 miles from where we are to-day. The people living tributary to these lines have very poor access to the outside world. The city of Washington is, perhaps, the largest center of population, therefore, the best market, so it attracts passengers and the products of that section of the country. The people very much desire the construction of this railroad and the consolidation of these small railroads, and the filling of gaps between by new construction, which will give them another railroad, also access to Washington. If we are obliged to comply with the law now pending the project will not be carried out.

Who would suffer from this? Would it not be the people of these two or three States through which the railroad would pass and who might otherwise have the facilities which they desire? Two of the railroads included in this consolidation have been built by local capital in the same way as the hypothetical case cited in Tennessee. The bonds and stocks of these railroads in which the money was invested made possible the building of the railroad. They have never had any returns upon them whatever. Two of these railroads have paid but little more than their actual operating expenses, yet they have been the agency through which a considerable development has taken place. They are, unfortunately, expensive to operate in their present condition, and what may be true of one road in that respect may not be true of all. It is often by not having the right kind of management, by not having their proper share of the through freight rate from the connecting carrier, and other reasons of a diverse character may be found. The people who owned the stocks and bonds of these roads are willing to exchange them for a like amount in the new project. It would be practically impossible to carry that enterprise through under the provision of this act, because if we were limited to pay a hundred cents on the dollar and there had to be a revaluation of these railroads to determine just how much the people who have had their money there for years would be permitted to realize, the enterprise would be so obnoxious to every sense of local independence and pride that the whole thing would be abandoned and things would go along until, finally, some trunk-line railroad feeling the necessity of passing through that locality or availing itself of an opportunity for a cut-off or of obtaining the business that would accrue to it by doing so, would go in and buy up the stocks and bonds of these railroads for less than half of what they originally cost to build; and they can issue their stock without any loss because they are in a prosperous condition and their stock is selling above par. Is an operation of this character helping the people of the several States or is it hurting them? That is a question which must suggest itself to your very serious consideration.

Now, as to the remedy. It is not for me to indicate what your duties are. I do not wish to extend my activities in that direction, but this suggestion I would make: First, make it absolutely clear in this bill that it does not apply to electric and steam railroad lines that are located wholly within the boundaries of a State and which



are not owned or controlled in whole or in part by any interstate railroad. Let the bill provide that new railroad enterprises which are not controlled in whole or in part or in any way whatever by interstate railroads, but which are entirely independent, may issue their bonds and stock to an amount double the actual cost of building and equipping the railroad, taking into consideration the amount which would probably have to be advanced for interest and other purposes until the road is in successful operation.

If you do this, and simplify the procedure by which these matters can be heard and disposed of by the Interstate Commerce Commission, I believe that the effect of the law will be beneficial, because in a measure it will impose a restraint upon wild-cat financing of railroad enterprises, and, at the same time, it will leave sufficient latitude so that new enterprises may go on and by offering the customary and proper inducement be able to interest the necessary capital to allow them to do that which they desire.

**STATEMENT OF MR. FRANK S. MASTEN, OF THE FIRM OF GOULDER, HOLDING & MASTEN, OF CLEVELAND, OHIO, REPRESENTING THE DETROIT AND CLEVELAND NAVIGATION COMPANY AND THE CLEVELAND AND BUFFALO TRANSIT COMPANY.**

Mr. MASTEN. I want to call your attention to just a small part of the bill H. R. 17536: The provision on page 18, beginning at line 10 and extending to and including line 23, which relates to the establishment of through routes, joint rates, and joint classifications where the carriers themselves refuse or neglect to make such through routes and rates or can not agree on the division thereof. That they (the commission) may do this upon complaint, or the commission may on its own initiative. You will note in the eighteenth line that that authority to so establish through routes, rates, and joint classification is conferred when one of the connecting carriers is a water line, without any limitation. It is to that provision of the bill alone which I want to call your attention briefly.

The present fifteenth section of the interstate-commerce act gives a similar power to the Interstate Commerce Commission, but it is coupled with the provision that it can only be exercised when there is no other reasonable or satisfactory through route. In framing this bill that language, "no other reasonable or satisfactory" route, has been eliminated as to the rail lines, and it is so eliminated that the power of the commission under this bill, if enacted, would extend to the establishment of through routes, through rates, and joint classifications by rail and connecting water line, no matter how many other reasonable or satisfactory through routes exist. Just what constitutes a "connecting carrier" when a water line is involved which is not owned or controlled or managed by a rail carrier or has not voluntarily entered into an arrangement for continuous shipment, I should not want to define.

There has been a common rumor, or rather an understanding among the water lines—and that is the reason they have not been better prepared for this meeting, and that is the reason why no more of the lines are represented here—that there was no intention on the part of the administration—and we regard this as the administration bill, although we may be misinformed as to that; that there was no

intention or purpose to change the status of the water lines by this bill. If that be the fact, we say that it is the wish of the water lines to make it clear by simply putting back into this bill the restrictive language as to the connecting water line, that it shall not be exercised when a reasonable or satisfactory through route exists. We say nothing as to the rail lines; but the power should not be exercised as to rail and water if there is another reasonable or satisfactory route existing. We think that these water carriers should stand precisely as they do now until their relations to rail carriers are better understood, and the rate regulation by land, real or supposed abuses in which gave rise to the original act, are better in hand. It can then be better understood what, if any, regulation the common carrier by water may need in the public interest.

Mr. STAFFORD. Why should water lines be excepted?

Mr. MASTEN. There are very many reasons, but I would first say this: The characteristics of transportation by water and rail are essentially different. The waterway is free, open, and independent, without let or hindrance from any State or even the Federal Government, so long as a man has money to buy a ship, or build a ship, in accordance with the restrictive and even drastic regulations now in force, and to officer and man it in accordance with the federal laws. This Government has seen fit to recognize an essential difference between land transportation and water transportation, and the line has been drawn at the "shore line," and there is, covering water transportation, almost separate and distinct systems of jurisprudence, having in many elements no counterpart in land transportation. There are now on the statute books more than 450 sections, further amplified by 150 pages of interpretations and extensions, by the board of supervising inspectors, which also have the force and effect of law, when signed by the Secretary of Commerce and Labor and not in conflict with statute. Carriage by water has been under the the distinct control of the Government practically since we had a government. A main reason for that, when it comes to the question of regulation, is that it has been an acknowledged part of the public policy of the Government that travel and traffic by water should be fostered, and since the coming in of railroads, maintained as a natural competitive regulator of the land-rail carrier. If it is within the legislative intent to change this, then it is a reverse of a policy long acknowledged and followed; and if it is not so intended, and a mere inadvertence, then it should be corrected; the bill should be made definite.

The language employed shows an intent to extend jurisdiction of the commission as to water lines beyond that it has now, and if insisted upon it ought not to be enacted without a full and detailed investigation of the various interests of the water lines in the different parts of the country, because what might affect one locality beneficially might affect another in a very different way; might destroy the water carriage entirely. The general impression among the water carriers, so far as I am able to learn since their attention was called to this bill, is this, that while it might be of some benefit in some localities, while it might benefit an individual water carrier at one place, its ultimate result would be the railroadizing of the water lines, and then the elimination of that natural competition which, as I suggested, it has always been the policy of the Government to foster. A change of

this policy would be such a turning back from established ideas as only to be justified under the clearest public necessity, which we do not believe exists. The waterways are free to any citizen, their traffic will regulate itself naturally, and should be as little interfered with as consistent with the proper regulation of the carrier by land within the act; that is, to prevent their use in connection with rail carriers to defeat the purpose of the law.

Again, it is a mooted question as to whether section 20 of the Hepburn bill, fixing liability of an initial carrier, if a water carrier is within the act, does not run counter to the great marine legislation of this country, limiting the general liability of the vessel owners to the value of his interest in the ship and freight pending, and the special exemption of liability for loss of or damage to cargo by what is known as the Haster Act, passed in 1893.

The original commerce act, the amendment of 1906, and this bill seem to have been framed without special or even general consideration of the peculiarities of transportation by water, but they were saved in great part from molestation from the simple fact that there was no occasion or call to regulate transportation by water.

We believe that the water lines and the land lines represent two distinct classes of transportation, essentially distinct, and they should be treated as different, as they have been in the past, not allowing one to be confused with the other, and giving to each such corrective legislation as their own evils may warrant. Their independence should be maintained. When they are employed together, the rate regulation can be made effectual from the rail side, if it is not now.

While the original act, as interpreted by the commission, brought our through business, whether passenger or freight, within the jurisdiction of the commission, where it is done under a continuous arrangement, it has not worked to any great disadvantage, and the lines have become somewhat adjusted to, if not reconciled to, that as to rates.

The CHAIRMAN. Is this a change of that provision?

Mr. MASTEN. As to through routes, yes.

The CHAIRMAN. This is an amendment to section 15 of the interstate-commerce act. Section 1 of the interstate-commerce act defines corporations and persons who are covered by the act as follows:

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment.

Those are the only water carriers that the interstate-commerce law applies to, including section 15——

Mr. MASTEN. But section 15 as proposed to be amended, referring to that character of transportation by rail and water, would give the right to make a through route and through rate only where no reasonable or statutory rate exists. This amendment eliminates that language "no other statutory rate exists," and makes us subject to as many rates and as many routes beyond the dock line as they might, in their wisdom, see fit to make, and compels the water lines connecting with rail lines to receive business at a rate and division the commission may fix, which almost necessarily involves port-to-port traffic, or at best is but a step removed.

The CHAIRMAN. Does it enlarge the class of persons covered by the act?

Mr. MASTEN. Not the class of water transportation which may come under the act, if they enter into that character of control. It simply extends the jurisdiction of the commission to compel a water carrier who happens to be a connecting carrier to enter into another arrangement, notwithstanding it may be already in a satisfactory arrangement and there be any number of satisfactory through routes. This undoubtedly grew out of the Enterprise case, which the Interstate Commerce Commission decided in 1905, I believe.

The CHAIRMAN. There is no common control by making a joint rate.

Mr. MASTEN. I agree with you perfectly that it should not be, but they have so held, and they are making us come in now on through business, freight or passenger, just on that thing. Where a line issues through bills of lading or through tickets, or honors the same issued by a rail carrier, then under the Social Circle case, decided in 162 U. S., I believe the Interstate Commerce Commission has exacted of all of these water lines, even independently owned and controlled, that they shall file their tariffs or concur in the rail carrier's tariff and come within the act in every regard. On May 4, 1908, they made the further conference order that if they voluntarily issued or accepted such billing or tickets, or had such arrangement, did one single, solitary iota of interstate business on through ticket or billing, by that voluntary act that brought all their interstate business, port to port, within the act and the jurisdiction of the commission; and it was only after rehearing and much argument that they set that order aside, and only claim jurisdiction as to the through business, except as to the matter of accounting, which is not settled. This was by a majority of one.

The CHAIRMAN. You say that the Interstate Commerce Commission now holds that an independent water line, not under the control of a railroad line, or not having a railroad line under its control, is governed by the Interstate Commerce Commission?

Mr. MASTEN. Yes, sir; on business done by through billing or ticketing; but we have a number of practical men here in the room who can answer that question from their own experience.

The CHAIRMAN. That certainly was not the intention.

Mr. MASTEN. It was not the intention of Congress, as we believe; it certainly was the intention to leave the water traffic alone. Now, by the language of the first section they, in connection with the decision of the Supreme Court in the Social Circle case, that the issuing of through bills of lading, or issuing a ticket to a single person, would subject that business, for that purpose at least, to all of the provisions of the act.

The CHAIRMAN. The Social Circle case did not have anything to do with the water lines.

Mr. MASTEN. I agree with you there, also, but they had so construed that case, and there is language there, taken in its literal meaning, which may be said to warrant their conclusion, although considered in the connection used, I doubt it.

Mr. ADAMSON. You do not insist that they may voluntarily sell through tickets and issue through bills of lading and yet escape being subject to the interstate-commerce law?

Mr. MASTEN. At present we are satisfied. While we think it was not intended to bring us under control, the railroads say it was. We desire to abide in every respect by the interstate-commerce act, if

it does touch us; they make us do it and we do do it. As the law stands now we can say, "We will quit doing through business;" we can stop right here and do no through business, and our interstate purely water traffic is entirely free; and as the law stands now, we can not be compelled to make through routes and rates, but may do so voluntarily.

Mr. MILLER. Was this Social Circle case decided on the long and short haul clause?

Mr. MASTEN. That entered into it, but it was an intermediate short railroad that thought to carve out its own business, and the Supreme Court said that they could not do it. They said, "You are in a joint arrangement for continuous passage over a through line or route, and in that respect you are in an arrangement for continuous carriage, subject to the act. The Interstate Commerce Commission has applied the same to rail and water when no other relation exists than through ticketing and billing.

Now, we are apprehensive of this character of legislation at this time. The Interstate Commerce Commission upon that slender thread went farther and said, If you voluntarily issue that bill of lading, or sell the ticket or accept and honor the same, you by that act necessarily bring the port-to-port business within the jurisdiction of the commission. We have the utmost faith in the good intent and high purpose of the commission. We feel, however, that our interests stand in such relation to the people that they ought not to be subjected to the hazard of constructions which would include rather than exclude this business from regulation, the necessity for which arose in another source.

Mr. STAFFORD. What is the case in which they overruled that?

Mr. MASTEN. I will get it for you; it was only a conference ruling.

Mr. STEVENS. You said that if this clause be enacted into law that it would tend to the "railroadizing" of water carriers. What did you mean by that?

Mr. MASTEN. We fear the ultimate effect of that would be to bring the water lines under the dominion of the rail lines. Now, there are practical men here who will be able to answer that question much better than I can, but we say as to this that we do not believe it ever was intended to regulate our rates and business, and we are fearful of each step of inclusion; it's a getting away from landmarks.

Mr. STEVENS. Going still further, you say that this would have the effect of bringing the water lines under the "dominion of the rail lines." By that do you mean that the rail lines would make the rates direct, and would direct what competition should be had, and all that sort of thing?

Mr. MASTEN. Yes, and a practical man, I think, will tell you that it would mean the extinguishment of a line, that it would mean to sell it—what I mean is, that if it is intended to depart from that long-established policy, we would ask that you give us more time, because the ramifications of the water business are such that it is not in our power to know just where we would land. The differences are very essential, and the result would be far-reaching. The eliminating of the proviso as to the existence of a reasonable or satisfactory through route is probably the outgrowth of the Enterprise case, where the Interstate Commerce Commission, where there was already a satisfactory route and rate, said that they could not, upon

the application of another water carrier, compel the land carriers to make another through route and rate. They did not say in that case that it called for the exercise of that power if they had it, because they closed their opinion by saying, in substance, "We do not know whether the facts in this case would justify this if we had the power."

It is a new thing to have water transportation dealt with in connection with rail transportation, and we think——

Mr. STEVENS. In the *Enterprise* case were they held to come within the act?

Mr. MASTEN. They made the application. There are even times where some of these old-established lines would be glad to have dominant power in their hands to compel a railroad to let it into another territory, but the immediate benefit, if any, is not commensurate with the possible ultimate harm.

Mr. STEVENS. Do you issue through tickets in conjunction with railroads?

Mr. MASTEN. Yes, sir; and we abide by the interstate-commerce law as to that business and publish rates or concur in published rates.

Mr. STEVENS. Is there any hardship in it?

Mr. MASTEN. We are working very well.

#### STATEMENT OF MR. EDWIN H. DUFF, OF WASHINGTON, D. C., REPRESENTING THE AMERICAN STEAMSHIP ASSOCIATION.

Mr. DUFF. Mr. Chairman and gentlemen, Mr. Masten has covered the case quite fully, and we subscribe to everything that he has stated, and when I say "we" I mean the American Steamship Association, comprising practically all of the coastwise vessels on the Atlantic and Gulf coasts.

Mr. STEVENS. Will you please file a list of those companies forming that association?

Mr. DUFF. Yes, sir; I have it right here.

(Following is the list referred to:)

##### AMERICAN STEAMSHIP ASSOCIATION.

Baltimore Steam Packet Company.	New York and Porto Rico Steamship Company.
Chesapeake Steamship Company.	Norfolk and Washington Steamboat Company.
Clyde Line.	Ocean Steamship Company.
Eastern Steamship Company.	Peninsular and Occidental Steamship Company.
Mallory Steamship Line.	Old Dominion Steamship Company.
Metropolitan Steamship Company.	Red "D" Line.
New England Coal and Coke Company.	Southern Steamship Company.
New York and Baltimore Transportation Company.	United States Transportation Company.
New York and Cuba Mail Steamship Company.	

Mr. DUFF. There is just one point that I would like to impress upon the committee with respect to the dissimilarity between the rail and water transportation, which we think the committee should have clearly in mind when legislating upon a subject of this character. In the first place, these steamship companies which are operating on through routes and joint rates with a railroad company do not object to coming within the provisions of the law so far as the Interstate Commerce Commission has construed the present act to apply. They do think, however, that after a through route has been established

with a railroad and water carrier between two points, that it is unreasonable, so long as the route is "satisfactory" and the rates are "reasonable," to clothe the Interstate Commerce Commission with power to establish an additional route and divide the business which is passing between the two points, and perhaps not in great volume, which has been established after long years and by the expenditure and possibly have the effect of driving the regular line of steamers—of a large amount of money and serving the public satisfactorily—out of business and leave a line of inadequate steamers to serve the public.

Mr. STEVENS. In other words, you want to have a monopoly fixed by law?

Mr. DUFF. Absolutely no, sir; and I will show you what I mean by my statement. In the first place, I said that you already have a line of first-class steamers between two points. Those steamers are regularly scheduled and have to go to sea; they have to have cargo, and they have to be seaworthy; they can not go unless they have a fair cargo in order that they may be seaworthy. Now, with a railroad company it is entirely different. It operates with railroad cars all about the same size. Their space can be adjusted to suit the cargo; but in the case of a steamer the cargo has to be adjusted to suit the space.

We are not here, gentlemen, to plead for legislation that will permit us to squeeze out competition, but we are simply asking for—

Mr. STEVENS. But that is what your argument would lead to.

Mr. DUFF. Oh, no, sir. If you have a satisfactory through route, and the rates are reasonable, what else do you want? We invite fair competition, but in the question of water carriage it has got to be on a fair basis.

Mr. ADAMSON. Do you object to the Interstate Commerce Commission permitting an additional through route to be established by the voluntary act of those who want to go into it, or simply compelling an additional route?

Mr. DUFF. Compelling an additional route. Where there is no satisfactory through route we do not object; there is no one objecting to making a through-route arrangement with railroad companies.

Mr. ADAMSON. Do you object where other people want to establish another through route on their own motion, or do you only object to the commission's compelling the formation of a through route?

Mr. DUFF. As Mr. Masten has stated, there is so very much to this subject that it is worthy of a great deal of time upon the part of the committee in going into it very carefully, so that the steamship companies will not be put in a position of seeming to come here before you and asking the committee to assist them in preventing competition. That is not their motive by any means. They simply want the committee to understand thoroughly the business of water carriage before passing this law. You can not regulate all water carriers. Take the tramp ship, for instance; take a sailing vessel; and take the private line (the man who runs his own ship for the transportation of his own cargoes); you can not regulate him. He has no terminals; he can load at the terminals of the shipper, and discharge his ship at the wharves of the consignee. Can you not see the discrimination and disadvantage to one if all are not regulated? The regular liners operating between two points, and serving the public, are not charging

unreasonable rates. The water carriers are not declaring large dividends, and they have been, and are now, competing against every kind of water craft and pirate on the high seas.

Mr. STEVENS. Oh, no; the water carriers do not, in domestic trade, have to compete with those.

Mr. DUFF. The American tramp and sail vessel all the time.

Take the case of one of the Clyde Line steamers, the *Algonquin*. The Clyde Line operates between New York and Jacksonville. There was a congestion of trade at Jacksonville not more than a couple of weeks ago, and it was desirable to send an additional steamer down from New York to relieve the congested condition. Would any member of the committee object to the law being so as to permit that steamer going out in the market to compete against tramp ships, sailing ships, or what not, in order to get a sufficient cargo and in order to enable her to safely navigate the ocean to Jacksonville?

Mr. STEVENS. Where was that freight destined to?

Mr. DUFF. I presume the freight was coming north, but I do not know exactly.

Mr. STEVENS. You do not pretend to say that any tramp ship would take that trade north, do you?

Mr. DUFF. No; but I do mean to say this: That the *Algonquin* wanted to go south; she had no freight and she had to get a cargo. The result in a case like this is that if they are under the act to regulate commerce they have specific rates, which, we will say, would be 30 cents. A tramp sailing vessel or a private vessel could come in and bid 10 cents, and get everything moving that way, and the regular liner would have to go light, because the law would not permit a change in the rate without notice. Is there any objection to that?

The CHAIRMAN. But that is not the proposition here, Mr. Duff. Tramp steamers can not make contracts for through shipments.

Mr. KENNEDY. I understand that a tramp ship could bid for a cargo.

The CHAIRMAN. I understand for a cargo from one terminal to another, but they don't make contracts for through shipments, and the only proposition here is on contracts for the through shipments.

Mr. DUFF. That is all, Mr. Chairman.

#### STATEMENT OF MR. E. E. OLCOTT, PRESIDENT AND GENERAL MANAGER HUDSON RIVER DAY LINE, OF NEW YORK CITY.

Mr. OLCOTT. I have no intention of asking for but a very short time, but I want to say a word about a unique condition that our company is in. I, however, would say, Mr. Chairman, that I take so much satisfaction from your remarks that there was no intention, unless there was railroad control, in bringing this under the Interstate Commerce Commission jurisdiction that I think any remarks of mine will be entirely superfluous.

The CHAIRMAN. But you must not pay any attention to the remarks that I inject here, for I do not have to stand by them.

Mr. OLCOTT. The Hudson River Day Line is purely within the State of New York, carrying passengers only, no freight at all, from New York to Albany on the Hudson River, a navigable free water highway. We have no railroad control; there is not one share of our stock owned by any railroad and we are only in the State of New



York. We run only for five months in the year, our principal business is tourist passenger business, and yet it has been ruled by the Interstate Commerce Commission that because we accept the tickets issued by railroads over our line we are under the jurisdiction of the Interstate Commerce Commission.

Mr. STEVENS. To what extent? What do you have to do because you are under that jurisdiction?

Mr. OLCOTT. We have to issue tariffs and file classifications. It has been suggested that you might bring up the uniform system of accounting, which would be very inconvenient for us, because, as I say, we carry no freight, and the principal basis of the bookkeeping and the system of accounting that has been suggested is for freight; and because we run only for five months in the year, during which time we keep our own very close watch over our income and outgo, and we do not divide our expenses into the different items which has been suggested might be introduced during the summer time. In the winter time, when we have plenty of time, we do more systematically divide everything in our own way, and we would very much object to this uniform system of accounting, because it would give important information, which is for our private use—a private company—to our competitors.

Mr. STEVENS. You do not claim that there is anything in this bill that compels that, do you?

Mr. OLCOTT. No; the system of accounting is another matter, and perhaps I should not have mentioned it. But it would seem to me to be very objectionable if, in the bills that are under discussion, and the Elkins and the Cummins bills, that clause where a "reasonable and satisfactory through route does not exist" should be eliminated. I think it will open the door to competition of an unfortunate nature for the simple reason that if the cheap, and possibly the inadequate or unsafe boats could come and carry passengers from New York to Albany, or vice versa, without giving the service that we give and without the restrictions that we are under, then it might be very unfortunate for us.

Mr. STEVENS. Before you go any further, would not any competitor or any competitive boat such as you describe be under exactly the same laws and the same system of inspection and supervision that you are under?

Mr. OLCOTT. Absolutely, so far as inspection is concerned.

Mr. STEVENS. Then why would they be unsafe?

Mr. OLCOTT. There are different classes of boats, very different, and different classes of accommodations. It makes a great difference. But the mere fact of our receiving railroad tickets and selling them is for the accommodation of the public and not largely for our own benefit. It would be very uncomfortable for the travelers up there if they had to go to Albany or to New York and lie over a train without their baggage being checked, and if they had to buy a separate ticket.

The CHAIRMAN. Isn't it a fact that you get a very large proportion of your business from people who buy through railroad tickets and either stop off at Albany and go to New York upon your line, or stop over at New York and go to Albany by your route?

Mr. OLCOTT. A great proportion of those people would desire to go and come, and to buy tickets from us.

The CHAIRMAN. Do you think they would buy tickets excepting through tickets upon which they could check their baggage through?

Mr. OLCOTT. I think a great many of them would; a large proportion of them. We do not consider that it would be disastrous to give it up entirely.

The CHAIRMAN. I have had the pleasure of riding on your line several times, and I am sure that I never would have done so if I had not had a through ticket.

Mr. OLCOTT. You are an exception, I think. But the interstate commerce act, it seems to me, speaking for our line alone, was designed for the regulation of railroads and not independent water lines which are purely intrastate; and the tendency of additional limitations and control is to make it much harder for us to make money, and the result of our not being able to get along if they did not issue through tickets would be that we should be driven to the wall, and then who would buy us up excepting the through railroads? Our case is unique and unusual; we carry no freight at all, and the incident of selling tickets does not seem to us to be sufficient to put us under the control of the Interstate Commerce Commission. We are getting along reasonably well as things are now, but new regulations would be more onerous still.

Mr. STEVENS. If you sell through tickets and make through rates and take baggage through, you are under the interstate-commerce law now as to that business.

Mr. OLCOTT. Yes, sir.

Mr. STEVENS. So that this act, if passed with this language in, would not change your status at all?

Mr. OLCOTT. I don't know anything about that, sir.

Mr. STEVENS. Well, in what way would it?

Mr. OLCOTT. It might relieve us from the limited liability that we are now under in regard to our steamers.

Mr. STEVENS. What is the language that changes your liability under existing law?

Mr. OLCOTT. I came here not prepared to speak at length; I am not a lawyer, and I can not analyze the whole bill carefully. I would have to refer to our lawyers for that.

Mr. STEVENS. We wish that somebody would place in the record the language that you claim would change it.

Mr. OLCOTT. I think Mr. Masten could answer that question perfectly.

The CHAIRMAN. Do you have any traffic arrangement with the New York Central Railroad?

Mr. OLCOTT. No; no traffic arrangement at all, excepting the same as we have with the Delaware and Hudson and the Pennsylvania Railroad, and I believe the other line that sells through tickets on our line—the same exactly as we have with the steamboats on Lake Champlain.

The CHAIRMAN. You say that there is no traffic arrangement, and then you make some exceptions.

Mr. OLCOTT. There is no traffic arrangement.

The CHAIRMAN. You have an arrangement by which you exchange service for tickets?

Mr. OLCOTT. The same as the other through lines have. There is no private arrangement at all; none whatever.

The CHAIRMAN. What do you mean by "private arrangement?" Do you have any exclusive arrangement under which these roads

agree to sell tickets good over no other steamship line between Albany and New York but yours?

Mr. OLCOTT. Absolutely not. If a person comes and wants to go from Philadelphia to Saratoga, and steps up to the Pennsylvania Railroad ticket office and says, "I want to go from New York to Albany," they would ask him which one of the four or five lines he would want to go upon, the West Shore, the New York Central, the day boats, or the night boats.

The CHAIRMAN. But that is not what I want to get at. You have an interchange of tickets with the New York Central Railroad. Does the New York Central Railroad in any way by agreement with you obligate itself not to give the same arrangement with some other new line or any other line of boats on the Hudson River?

Mr. OLCOTT. Absolutely not, sir.

The CHAIRMAN. They are at perfect liberty to patronize a line that would be started in opposition to you?

Mr. OLCOTT. So far as I know, there is no arrangement with us, absolutely; and that is the chief reason why we think we ought to be excluded from the operation of the interstate commerce law, because we are operating on a water highway, and the only way in which we maintain our business is by giving adequate service, the best that we think could be given, spending large amounts of money to keep abreast of the times, using the best of boats for the purpose; and we have no franchises and no special privileges of any kind.

The CHAIRMAN. If a new line should be started on the Hudson River, a boat line, under the existing law, there is nothing to prevent the New York Central Railroad from entering into a continuous traffic agreement with them, making a joint through route; and you think that under this law they would have that power?

Mr. OLCOTT. I think they would, sir.

The CHAIRMAN. And that would be starting a rival in business to your line, possibly?

Mr. OLCOTT. It certainly would likely have that tendency, sir.

Mr. STEVENS. Isn't that the point that you gentlemen should address yourselves to frankly, that you don't think it is wise, from a public standpoint and as a matter of public policy, to have that competition? That is what I would like to know about it.

Mr. OLCOTT. We have never had it, and we think it is against public policy to add restrictions and to discourage water lines. We have always felt perfectly free. We have never had a competitor, and we have felt perfectly willing to keep our service above the others, and in that way maintain our superiority. And it is not a narrow view, if other people want to put as much money in the business as we have put in it, and to acquire the terminal facilities. We do not fear competition, but we do fear added restrictions in our business by the Interstate Commerce Commission, compelling us to keep our books in certain ways and compelling us to do things which are unnecessary for the public business and which will increase and almost certainly lead to the wiping out of competition by the absorption of our lines by the railroads, and instead of being independent and free and open service to the public they will become monopolized by the railroads.

(At 11.55 a. m. a recess was taken until 2 p. m.)

## AFTER RECESS.

At the expiration of the recess the committee resumed its session. Mr. KENNEDY. Gentlemen, you may proceed.

## STATEMENT OF MR. FRANK S. MASTEN—Continued.

Mr. MASTEN. One of the members of the committee this morning asked that some one put into the record the language of the act which furnished the limited liability, and the Harter Act, spoken of. I think the last speaker was not quite clear on that, and if I may do so I will try to clear it up on the record. The twentieth section of the Hepburn Act, so-called, provides in general terms that the initial carrier of an interstate shipment shall give a through bill of lading with receipt attached. It further provides, without going into detail, that that initial carrier shall be liable to the shipper, in the event of damage to the goods during transportation, with the right in the initial carrier to recover over against the carrier on whose line the damage was done. We will suppose that a shipment is sent, we will say, from Albany to Cleveland by way of Buffalo, on a lake line or vessel, and the initial carrier we will say is the New York Central, or any line reaching out of Buffalo—or a water line; it makes no difference. By a fault or error in navigation or in the management of the ship between Buffalo and Cleveland, we will say, that cargo of goods is damaged to the extent of \$10,000. By the twentieth section of the Hepburn Act the initial rail line is liable to the shipper for his damage. When that initial line comes to recover over against the lake line, on whose line the damage occurred, it will say, "No, I am not answerable for that because by the act of 1893, commonly called the Harter Act, I am exempt for damage to the cargo where it arises by reason of faults or errors in navigation or in the management of the ship." Query: Who shall stand the damage?

Under that twentieth section, on that character of shipment, whether it be voluntarily entered into by the lake line or whether the lake line is compelled to become a party to its carriage, can he answer, "I am not answerable. You must stand the loss?" And must the initial carrier come back to the shipper and say, "I can not get the relief afforded me by the act, and therefore I will not pay you?"

Let me carry it one step farther, to illustrate the other dangers. Let us suppose that exactly those same circumstances occur, and the ship is totally lost on the lakes. The initial carrier makes some payment, \$10,000, to the shipper, as he is required to do under this act, and he calls upon the owner of the lake line to make good that loss. The owner of the lake line says, "No. Section 4282 limits my liability for all damage done, occasioned, or incurred without my own personal privity or knowledge, to the value of the ship and the freight then pending. As the Supreme Court has construed that, that value must be taken at the end of the voyage on which the damage is done, occasioned, and incurred. If the ship is a total loss, the value of any interest in the ship and freight pending is nothing; and therefore I will not pay you at all."

Mr. STAFFORD. What case is that?

Mr. MASTEN. There are a great many. I will give you a reference to them. It is the thoroughly established law, and has been since

1851, when it was adopted in the statute. I know that lawyers more capable than I say that the effect of it would be to set aside, in that character of shipment, that provision of the general act in limitation of liability, and the special act as to cargo. My own notion is that it does not, but before your deliberations are closed you will probably have suggested to you that, whatever is done with the act, there should be an amendment put in there which shall say in terms that any transportation by water which may be affected by this act shall be subject to the laws and regulations applicable to transportation by water, so as to put the matter of whether those statutes are interfered with by that entirely beyond any question.

Mr. STAFFORD. Has section 20 of the Hepburn Act been construed in conjunction with the Harter Act, so far as the liability of the lake carriers is concerned, in the cases you instance?

Mr. MASTEN. I was told yesterday that one of the district judges for the southern district of New York had some time in the recent past held that it did not set it aside. Whether that has gone to appeal or not I am not advised. I have not seen the case reported, but I was told by a New York attorney yesterday that Judge Adams—I think it was—had made a ruling of that kind. That is my personal view. I know that the contrary view is entertained by a number of lawyers who have studied the question.

Following that, and putting another thing entirely beyond question, there has been at least no general intent on the part of anyone to affect in any manner the water-carrier's port-to-port business. As you requested it this morning, I will, if I may, read into the record, so that you may have it, the conference ruling to which reference was made this morning. The commission on May 4, 1908, made this conference ruling, known as "B No. 2:"

A steamboat line agreed upon a joint rate with a rail line for certain passenger and freight traffic. Held, that it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the commission.

That was the conference ruling which I said had been reversed by the commission on application for a hearing by a majority of one.

So I think it will be suggested to you before long (and perhaps you may even have it before you now, as I know a gentleman has been preparing a brief for the purpose of submitting it to you), that there should be included at this time, whether this bill passes or not, a provision that nothing in this act shall be construed to in anywise affect a water-carrier's water haul, so that as much independence may be maintained for those water lines as may be.

Now, let me add one word. It is not a question of preserving a monopoly in any locality and it is not a question of selfishness, from our point of view. There has been, so far as I am informed, no public cry for any tightening of the reins on the water carriers. As I said this morning, there are and must be some localities, as there are under every general law, in which it may work a seeming injustice. That is one of the disadvantages that a particular locality or a particular individual may have to undergo in any community; but it seems to us that, a policy having been adopted, it ought not to be reverted upon unless there is a general public necessity calling for it, and it ought not to be done in an endeavor to meet the necessities of a particular locality or of a particular trade.

I believe it is a principle that is recognized that a general law which is made to fit a particular case is likely to be bad legislation; and I really feel that in this case it would be. And so, if it might be done, I should like, and most of the water lines would like, while they are finding their bearings and seeing how this thing works out, to have the water lines left in their present status as far as possible. It is difficult in any statute that bears upon the carriers by water to make it affect the private carrier, the "tramp." It does not affect the private carrier, the "tramp." All the legislation bearing upon that subject has one and the same thing in view, and in the regulating of transportation by water carriers all the instrumentalities have been brought in, even down to the extent that a man who owns a freight boat, as it stands now, unless he has a license, may not even ride on his own boat. I thank you.

Mr. KENNEDY. Just one moment. I am in total ignorance of those statutes affecting water carriage that you have been talking about, but it seems to me that if the law is as you say it is the Hepburn bill as it is drawn, making the initial carrier liable for damage to the goods that he takes, would be very unjust to the initial carrier if he has a joint route over some steamboat line——

Mr. MASTEN. I think so, too.

Mr. KENNEDY (continuing). And that law exempts the steamboat. In other words, the initial railroad would then have, under the Hepburn bill, to pay the damage without any sort of recourse against the steamboat.

Mr. MASTEN. That is my interpretation of it. I do not believe that those special statutes could be set aside and set at naught by anything except a specific reference to them. That is my own notion; but the courts do not always agree with my notion. Judge Adams, I understand, has taken that view, but courts of appeal sometimes reverse lower courts. The point you make is exactly the point I have in mind. Now, what is the effect of that? Does it set aside the special exemption given by the general maritime laws to water carriers, and leave the liability with the initial carrier, or does it carry both?

Mr. KENNEDY. The water carrier being only responsible to the value of his ship when it reaches its destination, if his ship has gone down by reason of negligence the initial rail carrier would have to respond primarily in damage, and look to the boat, which is on the bottom of the lake, for reimbursement.

Mr. MASTEN. Yes; on the bottom of the lake, where it had no value. Another thing: Under the interpretation of our Supreme Court that vessel may be fully insured, but that being a personal contract with the owner, in no way attaching to the ship, he may put that in his pocket. Our solicitude is as to what is the effect of that, and therefore we say that anything that tends to bring more of our property within their jurisdiction subjects us to an increased likelihood of those conditions arising.

If I am not taking too much time, I would like to refer to one other thing. By the general maritime law, when that vessel and her cargo once leaves port, I will say at Buffalo, if a common peril threatens the ship and cargo, the master of the ship is clothed by the maritime law with authority to sacrifice any part of the ship or cargo for the safety of the balance of the cargo; and by that same law all of that

which is saved, cargo, ship, and freight, shall on arrival at the point of destination be assessed in general average to make up the amount of that which is lost, less the lost part's contributive share. The initial carrier will be liable over to the shipper under the bill of lading and receipt for that share of the cargo's contribution to the general average; but if the initial carrier seeks to claim that over against the water carrier, the answer is that the adjustment is made in accordance with the maritime law, and that is "I will not pay for it." Will that be set aside?

Take another illustration. My goods are on the dock at Buffalo, I will say. A ship is alongside the dock. Your goods are on board the ship. After your goods have been fully loaded and they become attached to the ship, and the ship becomes attached to them, fire breaks out which threatens the dock and the goods on the dock, and the ship, and the goods on the ship. An independent vessel, or an independent individual, comes along—I mean an individual not connected with the municipality, whose duty it would be to extinguish the fire—and he extinguishes the fire on the dock and the goods on the dock, and the fire on the ship and the goods on the ship, and he saves half of the value of each one, we will say. My goods are on the dock, and I owe him nothing for saving that half of the value. Your goods are on the ship, and he has a claim in salvage against your goods, and a possessory right against the thing itself, a lien on it, and the amounts which the courts will give vary largely, depending on the size of the chancellor's foot, so to speak. Now, who shall make good that loss? The initial carrier?

Those are the reasons I suggest, and which will, as I say, be suggested to you; that so long as there is any character of water transportation, either by voluntary act of the line itself, or by the compulsory act of the commission under the law as it now stands or may be amended, there should be a provision which in term says that the transportation by water shall be subject to the laws and regulations applicable to that character of transportation.

You will find, if you examine any of the statutes to which I have referred, the limited liability act, section 4282, and the regulations up to 1885, that it does not depend on the vessel being a common carrier or a private carrier. It simply is transportation by water.

Mr. STEVENS. If we should make any amendment clearly excluding the water carriers from the operations of the provision that you have just alluded to, what would be the effect as to joint rates and routes between water carriers and rail carriers?

Mr. MASTEN. Rail carriers would do just exactly as they do now. They say to the water carrier, "Before you take any of our goods you will waive as to us your right to claim that benefit, or we will not give you any goods."

Mr. STEVENS. That is done now?

Mr. MASTEN. That is done now. I know on certain lines it is done, and I think done invariably. Where the rail carrier passes any of its goods over to the water carrier it requires the waiving of the water carrier's right to look to the Harter Act, which even exempts them from liability for damage to the cargo by reason of faults or errors in navigation or in the management of the ship. It only leaves the personal liability of the carrier by water where he himself—that is, the owner, or in case of a corporation the managing officer—is per-

sonally liable. The railroad carriers protect themselves now against that in some instances, I know.

Mr. STEVENS. Does that operate at all to prevent joint routes and rates, wherever it is for the advantage of the public that such should exist?

Mr. MASTEN. I do not feel that I am qualified to answer that question. I know that the question of the effect of the Harter Act and those special rights applicable to water carriers have been the subject of a great deal of negotiation between independent lines working in conjunction with railroad lines, but whether it has resulted in the exclusion of freight I do not know. But if the water carriers were to refuse to make an arrangement of that kind, they would get very little through freight. That is the best answer I can make. I am sorry I can not answer the question more specifically.

Mr. STEVENS. In the discussions on that amendment, I think it is very clear that the subject of the water carrier was not considered, and it was not considered in this committee.

Mr. MASTEN. I think it is a safe assertion, from an inspection of the rail-rate regulation, that practically no attention has been paid to the water lines, except an evident intent expressed in the reports: "Well, we are not going to touch that." I believe it to be a fact that there is neither a public necessity nor a public demand for it; and the only danger to the independence of the water line is that it will be included in some general provision, through inadvertence.

Mr. STEVENS. As you perhaps know, the House yesterday passed a very large river and harbor bill, carrying more than \$42,000,000 for the improvement of the waterways. It is the subject of a great deal of discussion among our people as to how transportation by water can be improved and what needs to be done by Congress to improve conditions so that we shall have more transportation by water and more competition by water, and better facilities by water. Now, what do you say as to this: In making these improvements what would be the effect of our bringing the water carriers under this act, with the different liabilities that you have discussed, or of exempting them from the liabilities you have discussed, or of leaving them out altogether? What would be your view about what ought to be done, from a broad public standpoint?

Mr. MASTEN. That is exactly the point of view from which I have been trying to approach it. The general good has been to improve and keep alive in every way consistent transportation by water. I did not know that that immense bill had passed. I am very glad to know it has, because it means a great deal to the lakes. The general purpose of that is to improve the channels and harbors, at least 95 per cent of the use of which is by a character of craft which no one has, to my knowledge, ever suggested should be controlled in any manner beyond what it is now—the private water carrier.

Mr. STEVENS. Under the operation of the acts that you have discussed have not more and more of the water carriers come under the control of the railroads? Has not that been increasingly true?

Mr. MASTEN. I would say that that is probably true, but I should not want to be saying that it was due to any specific thing other than the dominion of the rail line generally over transportation. Just how that is brought about is more of a transportation problem than I can answer.



Mr. STEVENS. I would like some one to discuss in what way the general navigation interests could be benefited the most, whether by being entirely independent or by having an arrangement of joint routes or joint rates by which they could compel the cooperation of the railroads, and in what way these various liabilities help or hinder.

Mr. MASTEN. That would probably involve in the first instance a division between the water lines which are distinctly water lines and independent and those controlled by the railroads. I have in mind one man who could, I think, discuss that matter very well, but I do not know whether he would be willing to do so or not or whether he would want to. That is too much of a transportation problem for me to undertake.

Mr. STEVENS. You notice that under the provisions of the law it rather seems to be the theory of those who drafted it that it would be for the best public interests to have the water lines brought under the jurisdiction of the commission, so far as through routes and rates are concerned—not discussing the question of liability. They seem to think that is the best policy. If there is anything to be said against that policy, from the standpoint of policy, we would like to have it.

Mr. MASTEN. I can only answer by saying that that would be subjecting to compulsion that which heretofore has been regarded as best serving public interests by being kept independent. Is there a public demand, a general public demand, or some extreme necessity? I know of neither.

Mr. STEVENS. Let us see about that. It has been stated in many places that independent water lines could not exist unless they had power to make through routes and rates to reach interior points; and on that account it has been pressed upon the various committees in Congress (and I know it was before the National Waterways Commission) that unless some such power be given the independent water lines they could not compete with the railroad lines between the same points—say between Boston or New York and points in Iowa; that an independent lake line could not compete with a through rail line.

Mr. MASTEN. My only answer to that is that I do not know of any independent line that has been forced out on the lakes, and I do know of independent lines that are operating there successfully now. The two lines that I represent are entirely independent, so far as any railroad control is concerned, and I think that the great majority of the lines on the lakes are independent lines with the exception of those that are known distinctively as being operated in connection with the great railroads centering at Buffalo, which are all well known. I know of no independent line that has been driven out for that reason. If there has been any, it is not within my knowledge.

Mr. STEVENS. You people think you could get along better and take your chances on the through rates?

Mr. MASTEN. My people think this: We have been doing fairly well. If there is to be a change of policy without the fullest opportunity to investigate it in all its details, we would rather, at least for temporary purposes, stay where we are until we can get our bearings. I am not answering for the other lines. I only answer for my own lines. I do not know about them. Is that all?

Mr. KENNEDY. We had some hearings here in which it was contended that the railroads, by a method of competition and by making

low rates between terminals on the Mississippi River, had practically put the steamboat out of commission down there between New Orleans and St. Louis.

Mr. MASTEN. That is a matter of common knowledge in the steamboat trade. I only know it from hearsay. I have no personal knowledge of it.

Mr. KENNEDY. It has been suggested, to remedy that, that we ought to fix minimum rates in that class of cases for the railroads.

Mr. MASTEN. In order to foster the water carriers?

Mr. KENNEDY. In order to help the water carriers.

Mr. MASTEN. I am in favor of anything that will aid them. I do not know whether that will or not, because the situation down there is different from what it is on the Lakes. I think it is a fact, as to the carrying trade on the Mississippi River, that the amount of product to be carried has diminished very greatly. Whether it is due to ordinary competition of the railroads or some ulterior matter, I do not know.

**STATEMENT OF MR. H. H. RAYMOND, VICE-PRESIDENT AND  
GENERAL MANAGER OF THE CLYDE STEAMSHIP COMPANY  
AND MALLORY STEAMSHIP COMPANY.**

Mr. RAYMOND. Mr. Chairman, Mr. Masten has so fully covered this matter that I find I have not anything to say after getting here, except that I represent the independent carriers, the independent lines, and that I will gladly answer any questions that you may put, from an operating standpoint. I judge that there has been an impression given here or that some of the members of the committee are under the impression that the independent carrier in his opposition to this proposed act wants to stifle competition. There is nothing in that. We welcome healthy, fair competition. The lines that I represent, with others, are really the regulators of the rates to the Southeast. While I am not informed as to the water rates all over the country, I judge that that is so wherever the railway line comes in competition with water. The rates to Georgia, Alabama, Tennessee, and all those places are made on combination of the water rate to the South Atlantic port plus the rail rate in the interior. We feel that the service we give to the public is what it wants, and to place our traffic, as our counsel says this will place it, under the jurisdiction of the commission on the port-to-port proposition, would be taking from us a large part of our tonnage and would necessitate the withdrawal of many ships, thereby curtailing the movement or the operation of the ships.

Mr. STAFFORD. Will you kindly elaborate how that would have that effect?

Mr. RAYMOND. It would have that effect unless you place the sailing vessel and the tramp or the unattached vessel under the same act. You permit them to make rates and take business against the regular carrier at will. We can not do it.

Mr. STAFFORD. As I understand, the tramp ship is at present barred out from competition with the coastal trade.

Mr. RAYMOND. No; you are getting a misunderstanding there.

Mr. STEVENS. That is the foreign trade.

Mr. STAFFORD. I mean the foreign trade.

Mr. RAYMOND. In using the term "tramp" I refer to the American "tramp"—a private vessel.

Mr. STAFFORD. There is competition in the coastal trade among domestic tramp ships and the regularly established lines, is there?

Mr. RAYMOND. Oh, yes. There are sailing vessels and barge lines. We can not operate under that bill if it places us under the bill and does not place the other people under it. There seems to be a good deal of doubt about it, and if it is not the intent of the framers of the bill to place the independent carriers under it, why not add something to it that clearly specifies it?

Mr. WANGER. Between what ports do your lines operate?

Mr. RAYMOND. I think there are in our fleet something like 75 or 80 vessels. They operate between Boston and practically every port to Mexico, and some Mexican ports and West Indian ports. The lines directly under my management operate from Boston to Charleston and Jacksonville; New York, Charleston, and Jacksonville; New York, Wilmington, and Georgetown; New York and Philadelphia; New York and Galveston; New York and Mobile; New York and Key West; New York and Tampa; New York and Santo Domingo. With allied lines we go to Cuba and Mexico.

Mr. WANGER. Do you have traffic arrangements with the trunk lines?

Mr. RAYMOND. Yes, sir; with all of them. Our opposition to forcing a connection with lines is that we do not believe it will create any more competition than is there now. We have no objection if anybody wants to voluntarily connect. We have not any objection to people going into our ports. If we can not hold our own, we ought not to be there.

Mr. WANGER. You want to be free to meet any rates which the tramp steamer may make?

Mr. RAYMOND. We want to be free to meet competition.

Mr. WANGER. Your companies are neither owned nor dominated by the rail lines?

Mr. RAYMOND. Not a single one of them, to the slightest extent, in any way, shape, or manner, by control, or ownership, or in any way.

Mr. STEVENS. Have you any objection to a provision of law that where you voluntarily make a joint rate, say from New York to Atlanta, with railroad companies, that the schedules filed shall show your proportion of the rate and the railroads' proportion of the rate? You have no objection to that?

Mr. RAYMOND. They have it now.

Mr. STEVENS. You have no objection to that, I say?

Mr. RAYMOND. No.

Mr. STEVENS. There have been some objections made by some of the steamship people, more especially in the foreign trade on the Pacific, to that provision. That is why I ask your views on it.

Mr. RAYMOND. We would prefer not to have it. We feel that it is a matter that the public is not interested in—the division of revenue.

Mr. STEVENS. Why not?

Mr. RAYMOND. But, as a matter of fact, the traffic agreements are all filed with the commission. Where there are arbitraries, so that rates are made which they really do not understand, we undertake to protect the initial carrier against what Mr. Masten was discussing a few minutes ago, by the insurance of certain traffic to various parts

of the country. We have that to-day in competition with the rail rate.

Mr. STEVENS. That requirement that you shall and do file those traffic agreements and show those rates does not have any effect on your getting business?

Mr. RAYMOND. No, sir; we do not file them as a matter of fact of our own accord. The rail lines file them for us, because we claim that we are not within the jurisdiction of the commission, and they hold so themselves, in port-to-port traffic.

Mr. STAFFORD. What proportion of the traffic destined for interior points carried on the coastal steamers is carried under through rates and what is carried merely on local rates?

Mr. RAYMOND. Most of it ultimately reaches the interior, but what is billed through at the beginning is probably less than 35 per cent of it—perhaps 35 per cent.

Mr. KENNEDY. It has occurred to me that if the right was conferred upon a line of steamers such as you manage and control to compel a railroad to make a through rate with you, with the jurisdiction in the Interstate Commerce Commission to adjust and to make fair that joint rate, and the division of the money on that joint rate, it would strengthen and help the water carrier.

Mr. RAYMOND. It would if they handled it the way you think they should, under that statement; but—

Mr. KENNEDY. I can not rightly understand why you are opposed to some such arrangement as that. I have understood that your coastwise trade has been having a pretty hard time against the railroads by reason of the way in which they make their rates.

Mr. RAYMOND. In some cases it is. In others it is not. As I say, the rates to the territory that we serve in the South are made on combinations through to port. My objection to forcing a railroad to connect with another line is that it might not be for the good of the public, because you would have a lot of inferior lines, possibly, that were there for some other motive than for public service.

Mr. KENNEDY. Most of your freight that you carry down to Charleston is destined to some interior point, is it not?

Mr. RAYMOND. Well, hardly. Perhaps 50 per cent that goes to Charleston goes in that way. A lot of it, though, goes into stores there and reaches the interior later.

Mr. KENNEDY. If you could contract to carry to some point inland 50 or 100 miles and compel the railroad to make a fair joint rate with you, it would help your business rather than hurt it, would it not?

Mr. RAYMOND. We have that, and we have not any objection to anybody else getting it in the same way; but we do object to men coming along, as they did in the Enterprise line, and putting on a steamer line at lower rates with the object of driving off reliable competition, and then restoring the rates to any figure they want. My principal objection to this bill, as I interpret it, is that it affects our port-to-port traffic, as said by Mr. Masten, and it would only result in one thing. It would drive the ships of that type and class off of the seas. They could not compete with the other vessels.

Mr. STAFFORD. Might it not have the effect of enabling the railroad which is in opposition to the carrier on the sea to secretly establish a tramp line to drive the established line out of business?

Mr. RAYMOND. Just exactly so.

Mr. KNOWLAND. If the tramp lines could be brought under the same regulation you would have less objection, would you not?

Mr. RAYMOND. If that is possible. I do not know. We would have less objection; yes. How you can regulate the tramp carrier, the sailing vessel, and the barge line——

Mr. KNOWLAND. I am just offering that as a supposition, without saying that it can be done.

Mr. RAYMOND. Yes. I thank you.

**STATEMENT OF MR. EDWARD F. MURRAY, PRESIDENT OF  
MURRAY'S LINE.**

Mr. MURRAY. This morning I wished to be heard, but I do not think I need be heard now. I think I was entirely misinformed as to the character of the hearing here. I understood that this was a hearing for the purpose of putting the accounting of water lines under the jurisdiction of the Interstate Commerce Commission; but from what I have heard I do not think that is the purpose of it. That I should oppose most strenuously, because I am in a position where the tramp is my competitor. I run a line of boats on the Hudson River, from New York to Albany and Troy. I am subject to the competition of every canaler, and if I were obliged to give away all the little secrets that we have in our business (and there are only a few of them in the transportation business) I would be at a decided disadvantage against the tramp, and the private boatman, who does not own any docks, or have any offices, and such things, but simply wants to get enough out of his boat to make him a living. But I do not understand that that is the purpose of this hearing. Am I right?

Mr. STEVENS. What we want you to discuss is whether or not it would be advisable to give the Interstate Commerce Commission authority to make joint routes and rates where a satisfactory route already exists. That is the point.

Mr. MURRAY. That is rather a delicate point with me. I do not know just how to take it. I run a line of boats that are at the mercy of a railroad.

Mr. STEVENS. There is a satisfactory route that already exists?

Mr. MURRAY. That is, a route that is satisfactory to me. It was not satisfactory to them. They wanted to change the divisions, and did change them. They cut out our tariffs entirely. They wanted us to reduce our division. While I would not want any provision for the Interstate Commerce Commission to have the management of business between port and port, because I could not stand it, I should be glad if there was some power that the water lines could appeal to when the railroads do not give them proper divisions of through rates.

Mr. STEVENS. You would have no objection to having the Interstate Commerce Commission have power to make rates, say, to the northern part of New York State, would you?

Mr. MURRAY. I would not, when the railroads will not treat the water lines fairly. I have in mind a case in my own business, where a railroad line wants to charge me about 30 cents a hundred for carrying the same class of freight the same distance that they carry it for somebody else for 10 cents. If there is not some provision, some law, some power to control that situation, there is nothing in

the world to prevent the railroads from choking all competition and giving preferential rates or facilities to their favored connection.

Mr. STEVENS. Under the present law they could give a monopoly to the favored connection?

Mr. MURRAY. Yes; that is just what they have done; and they gave my competitor as good rates as they gave me, and I do not know but they gave better. I never inquired, because it was not my business, and there was no way I could find out if I wanted to.

Mr. STEVENS. And they could refuse you the same rates and the same facilities because they would not make a joint route with you?

Mr. MURRAY. We had a division of rates that had been in force thirty-odd years, and a new management came in which wanted to get some of my earnings to help their earnings—I presume that was the case. They asked me to reduce the rates that we had had in for thirty-odd years, and I refused to do it. They simply canceled my tariffs, state and interstate, and I was for months and months without any through rate whatever.

Mr. STEVENS. What did you do? When did that occur?

Mr. MURRAY. It occurred last year, sir.

Mr. STEVENS. What did you do? Did you apply to the Interstate Commerce Commission?

Mr. MURRAY. I applied to the public-service commission first. They did not have jurisdiction, because the public-service law in our State is not quite as broad in that respect as the interstate commerce law; but it cost me about \$2,000 in legal expenses to find out that the public-service commission did not have jurisdiction.

Mr. STEVENS. Did you then apply to the Interstate Commerce Commission?

Mr. MURRAY. I applied to the Interstate Commerce Commission, but in the meantime they modified their rulings and put our tariffs in, and we are now getting along the best way we can.

Mr. STEVENS. You think it would be for the interest of lines like yours to give the Interstate Commerce Commission authority under such circumstances to make——

Mr. MURRAY. Under certain conditions; but if they can have authority over me and not over my competitor, then I am out of business.

Mr. STEVENS. What do you mean by your competitor?

Mr. MURRAY. Every canal captain that has his own boat, and every man who has a barge, and every man who comes up the river with a sailing vessel, who has no power except the Almighty above him. He is the man I am competing against. It is not the regularly established lines.

Mr. STEVENS. We, of course, have authority to put him under our jurisdiction if we see fit; but we probably will not.

Mr. MURRAY. If you have authority to put them under your jurisdiction, you can do more than the Almighty can.

Mr. STEVENS. We can provide regulations under which they may carry freight from place to place in interstate and foreign traffic. I do not think there is any doubt about it. But, of course, we will not do it. Nobody pretends to say that we will. If that be not done, then what do you say about the advisability of keeping you in the same status, and not giving you any more power and control than they have; not giving you any more authority to go to the

Interstate Commerce Commission to enforce through routes or through rates than they have?

Mr. MURRAY. Then I would be in the same position as I was last year.

Mr. STEVENS. There is such a provision now.

Mr. MURRAY. Where a satisfactory route is established, that means only one.

Mr. STEVENS. Yes.

Mr. MURRAY. And that means the preferential route, if they have a mind to take advantage of it.

Mr. STEVENS. You would not object to it so much if there was a provision that it should apply equally to your competitors?

Mr. MURRAY. I would not feel the objection to it that I would otherwise.

Mr. STEVENS. Suppose that we did not deem it advisable, and unquestionably we should not deem it advisable, to extend it to your competitors, what would you have to say?

Mr. MURRAY. Then you are simply putting me at a disadvantage.

Mr. STEVENS. It is a question of public policy. What do you think would be best for the men situated as you are—to leave you out entirely, to let you fight it out with the railroads as best you can, or give you a chance—

Mr. MURRAY. I am in favor of you giving me a chance, and I am perfectly willing—

Mr. STEVENS. Even though your independent competitors, the canal boats and the sailing vessels, are not placed under the same restrictions that you are?

Mr. MURRAY. That reaches too far for me to say what that would reach to. There is no way that I could assume to make judgment in a case like that.

Mr. STEVENS. Well, that is the situation that is before us.

Mr. MURRAY. I do know that this country has spent hundreds of millions of dollars to improve the waterways of this country, and is ready to spend hundreds of millions of dollars more; but it will be wasted unless there is some power that will compel the railroads to interchange business with water lines on a fair basis, because there is not any point in this country that I know of that has enough business on the water lines to maintain first-class lines such as you should have.

Mr. STEVENS. That is just exactly what this bill is designed to do.

Mr. MURRAY. Yes; I am perfectly frank in the matter. There is nothing else to do. I think there is not enough business between St. Louis and New Orleans to maintain a first-class line unless, at the different points along that river where railroads and water lines can connect, there is some power to compel the railroads to connect on a fair basis.

Mr. KENNEDY. It seems to me that you want this bill just as it is proposed.

Mr. MURRAY. I do not know who the author of the bill is, sir.

Mr. KENNEDY. The Interstate Commerce Commission would never compel a railroad to make a joint rate with the tramp or the canal boat, or these irregular boats which you speak of as being your competitors.

Mr. MURRAY. I do not know just what they might do, sir, for the purpose of eliminating certain competition or for the purpose of reducing the values of property or other things. I am in the same

position that my friend Mr. Raymond is with his lines, only in a much smaller respect. In the case of his competition the Almighty furnished his competitors the right of way and greased the rails for them just the same as He did mine, and I do not know any power that can control them.

Mr. KENNEDY. But if you were operating your line, this traffic coming over the railroads would have a right to go to the commission and insist that a joint rate be fixed.

Mr. MURRAY. Just go a little bit further, if you please—a joint rate and a fair division.

Mr. KENNEDY. And a fair division.

Mr. MURRAY. I believe that there should be something in the law providing that the railroads should not be permitted to charge any more for the same service than they charge to their most favored connection or patron.

Mr. KENNEDY. As I understand, the commission have a right to adjust that joint rate and make it fair between the parties. The railroads in taking freight to come down to their terminals that you connect with, and then go over your line or that of a tramp to the points you touch from that connecting point, have to publish their schedules of rates. They publish the through rate?

Mr. MURRAY. The through rate.

Mr. KENNEDY. Now, they can not get a canal boat to haul it cheaper. They are not permitted to pay the canal boat less than their published rate.

Mr. MURRAY. I do not think you have that right, sir. I do not think that question comes in at all. We have competitors in the canal boats, and the railroads get more out of the business that comes by canal boats than they get out of our line. The canal-boat man can afford to carry it for less than I can. He has no dock expenses, no office expenses, no internal expenses, no organization to maintain.

Mr. KENNEDY. But he is running a regular transportation line and would probably be a proper party for a through rate for heavy freight.

Mr. RICHARDSON. I understood you to say just now that you did not believe this great waterways movement would be a success, finally, unless the railroads could be made to do business on a fair basis with water transportation.

Mr. MURRAY. Unless you treat them fairly in the matter of terminals, and so forth.

Mr. RICHARDSON. What do you mean by that?

Mr. MURRAY. I mean unless there is some power to compel the railroads to put in through rates and to make proper divisions.

Mr. RICHARDSON. Do you not think the Interstate Commerce Commission ought to have the power, where it ascertains from investigation or in any other proper way that the railroads are lowering their rates for the purpose of breaking down water competition, to forbid that?

Mr. MURRAY. I have never heard of a case of that kind, except that I have incidentally heard that that is the situation on the Mississippi River. It is not the situation on the Hudson River. I am now speaking of the New York Central and Hudson River road and the West Shore road, because they are the ones that come in direct competition with the Hudson River and the Erie Canal. The rates



between all points are maintained by those railroads on a living business basis.

Mr. RICHARDSON. Take your own illustration about the different points from St. Louis down to New Orleans, on the Mississippi River, where the boats come in competition with a railroad that touches the bank somewhere: Would it not be an easy matter for the railroads to so adjust their rates as to drive the water line out of business?

Mr. MURRAY. I presume they might. I did not know that that had been done. It has not been done up in our territory, and that is the reason I say what I do.

Mr. RICHARDSON. If they could increase their traffic, their trade, and their patronage by doing that, why could they not do it, and drive the water lines out of business, and then, after they go out of business, raise their rates?

Mr. MURRAY. They could do it without raising their rates again if they could get enough revenue out of the rest of their business that was not competitive.

Mr. RICHARDSON. It seems to me, as I recall it, that the National Waterways Commission made some such suggestion as that, Mr. Stevens.

Mr. STEVENS. There was some such suggestion made.

Mr. RICHARDSON. That is to say, that the Interstate Commerce Commission ought to be clothed with such authority as would enable it to prevent that very thing.

Mr. MURRAY. That was one of the arguments made before the Waterways Convention. But such a condition of affairs does not exist in our territory, and never has existed.

Mr. WANGER. The railroads have never put their rates so low as to drive the water craft out of business?

Mr. MURRAY. No, sir; they have not, sir. I have been in business a lifetime—forty-seven years. Originally the railroads on the Hudson River made what were called flat rates. They agreed with the large shippers to carry all their freight at a certain rate by the year between New York and Albany and Troy. But of all late years, for the last twenty-five or thirty years, everything has been done on a different basis. The railroads up in our territory during that time have gotten good, fair pay for the work they have done. So much has that been so that although we are running a barge line in competition with them our rates on the higher classes are only a few cents a hundred less than the railroad rates, because we can not afford to take them much lower. For instance, the all-rail rate from New York to Troy on first-class freight is 26 cents a hundred, whereas our rate is 20 cents.

Mr. RICHARDSON. Then your contention is that there ought to be some power somewhere to make railroads establish through joint rates with water transportation lines?

Mr. MURRAY. Yes, sir; because if that is not done the water business alone can not exist.

Mr. RICHARDSON. It can not exist because the transportation upon the steam railroad is so much more expeditious and rapid that if you run them at the same rate the people will naturally prefer the railroad?

Mr. MURRAY. That is not the reason I give, sir, for that.

Mr. RICHARDSON. What is it?

Mr. MURRAY. It is because there is not a sufficient volume of business on the water to maintain first-class water lines. The water-

line business must go to the distributing point and act as a feeder to the railroads, and the railroads must act as feeders to the water lines.

Mr. RICHARDSON. But, as I understand, in order to make the inland waterways movement a success, there will have to be a joint terminal between the steam roads and the waterway transportation line?

Mr. MURRAY. Yes, sir; they would have to be established at the place where the volume of the business would require it; and they would have to be established on some basis whereby the waterways lines would pay their fair share of the cost of maintaining them. There is an equitable point in everything. Water lines are not entitled to everything. I think the railroads are entitled to a fair revenue, just as well as the men who put their money into water lines.

Mr. STAFFORD. As I understand you, the rail rates in the competing territory in which you are engaged are the same throughout the year? The condition is not as it is in the Mississippi Valley, where the rail rates vary with the time of the year, depending on whether or not there is competition through the navigation on the Mississippi River?

Mr. MURRAY. With us the tariffs are issued, and there has not been a variation (except that once in a while there is a commodity put in) in ten or more years. We have not the condition that you speak of as existing on the Mississippi between St. Louis and New Orleans at all. We never have had it.

#### FURTHER STATEMENT OF MR. H. H. RAYMOND.

Mr. RAYMOND. Mr. Chairman, my friend Mr. Murray is talking on one proposition and I have been trying to address myself to the other. He has a different situation. He has inland waterways, and he has a different character of vessels and of service than we have on the ocean. Ours goes up into millions of dollars. One vessel that we launched last year cost over a million dollars. We should not be compared with the barge service on the Hudson River, or the inland waterways of the Mississippi, where there might be abuses on the part of the railroads.

I contend, with all the emphasis that I can, that to force railroads to connect at ports with water lines that might be of a tramp character or irresponsible would not encourage or foster the merchant marine but would hurt it. The railroads could come along, if they wished, and put on two or three cheap boats and run the rates down between any of the North and South Atlantic ports or North Atlantic and Gulf ports, and wipe these regular lines out of existence; and then they would have what they wanted. They would have the rail haul.

Mr. STEVENS. Do you know whether that has ever been done?

Mr. RAYMOND. Yes, sir; it was done on Long Island Sound.

Mr. STEVENS. What road did that—the Long Island road?

Mr. RAYMOND. The New Haven road.

Mr. STEVENS. The New Haven road did that?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. Between what ports?

Mr. RAYMOND. Between New York and Providence and Fall River. They put on a cheap line. They bought two or three cheap boats. It was called the "Enterprise case," and was handled by the

Interstate Commerce Commission. They put on some new lines, and ran some cheap boats. They called it the Enterprise Steamship Company. I think that was the name of it.

Mr. STEVENS. Was that backed by the New Haven Railroad?

Mr. RAYMOND. They ran it under cover. Some of their old boats were turned over to somebody else to operate, to drive off the opposition—to drive off a regular, established water line.

Mr. RICHARDSON. How do you propose to remedy that? You may have suggested a remedy somewhere in your remarks, but I did not hear it; and I should like to hear it.

Mr. RAYMOND. I do not know how you would remedy it, except that where there is a reasonable route and rate, where a satisfactory route exists, I do not believe the commission should be given power to force the connection of the steamship line with the railroad if they do not want to do it.

Mr. STEVENS. In that case the New Haven road did own a reasonable line, a good line?

Mr. RAYMOND. They did.

Mr. STEVENS. And they tested the point as to whether a cheap line could be allowed to compete with their well-established, first-class line?

Mr. RAYMOND. There was a pretty good line there.

Mr. STEVENS. What line was that?

Mr. MURRAY. The Providence Line and the Fall River Line.

Mr. STEVENS. Those were owned by the New Haven Line?

Mr. MURRAY. They were not originally, sir. They were at one time all independent lines. The New Haven road has gobbled up the old owners.

Mr. STEVENS. They have been under the Old Colony Steamship Company for a good many years, have they not?

Mr. MURRAY. They have.

Mr. STEVENS. And the Old Colony Steamship Company is owned by the New Haven road?

Mr. MURRAY. Yes, sir.

Mr. STEVENS. Your point is, Mr. Raymond, that the New Haven road, to test the question as to whether or not a cheap line could be used to run out a well-established line, backed this Enterprise Company in testing that provision of the law? They wanted to ascertain whether or not, when a satisfactory route existed, a cheaper line would be allowed to compete with it? That was the illustration you used, was it?

Mr. RAYMOND. Well, not exactly; no, sir.

Mr. STEVENS. But that is the case that you mentioned.

Mr. RAYMOND. That is the case. If this power is put in the hands of the railroads, and a similar condition existed between New York and Charleston, for instance, or New York and Jacksonville, or Galveston, or anywhere else, and they could run those boats, they would withdraw them, as they did in the case of the Sound.

Mr. STEVENS. They did not withdraw their Fall River and Providence boats.

Mr. RAYMOND. They did not withdraw their Fall River and Providence boats. They let those established lines stay there.

Mr. STEVENS. They can do the same thing in competing with you, can they not?

Mr. RAYMOND. They could, but they have not got them.

Mr. STEVENS. But they can establish them, if they want to.

Mr. RAYMOND. But you are protecting the railroads against the water carriers.

Mr. STEVENS. No; we want to protect the water carriers against the railroads. We want to do just the other thing.

Mr. RAYMOND. In my humble judgment, you can not do it by throwing the bars down at the ports.

Mr. STEVENS. We want to encourage the independent carriers. I think that is the public policy. The theory of the provision is that we can encourage them best by compelling the railroads to give them the same facilities that they give their own boats.

Mr. RAYMOND. I think that theory is wrong. I can illustrate what I mean, though I do not like to use cases that are within my own knowledge and on our own lines. I do not think the public are benefited by the character of competition that exists to-day between New York, say, and Texas. Here are the boats of the Southern Pacific Company—it is true that that is a rail line—and the boats of our company, that cost anywhere from three hundred and fifty or four hundred thousand dollars to a million and a half dollars apiece. The service is not excelled anywhere, and the rates are not high. Suppose a man comes in with 8 or 9 knot boats of cheap construction and operation, without terminals, organization, or anything else, and makes rates there that he thinks are ruinous, for the purpose, as we believe (as has happened in other cases), of being purchased. To permit that man, whoever he may be, or that class of boats, to connect with the railroad, and thereby to increase his routes and keep his boat line there indefinitely, is not doing the public any good, because it will ultimately force either our service and that of the other good lines down to his class or eliminate him, or eliminate us. One of those things must happen.

Mr. STEVENS. Let us take another view of the same situation. Between what ports does the Mallory Line ply?

Mr. RAYMOND. Between New York and Galveston.

Mr. STEVENS. Between what ports does the Southern Pacific Company's Line, the Morgan Line, ply?

Mr. RAYMOND. Between New York and Galveston.

Mr. STEVENS. The Morgan Line is owned and controlled by the Southern Pacific Railroad Company?

Mr. RAYMOND. That is right.

Mr. STEVENS. And of course the Southern Pacific Railroad Company gives the Morgan Line through routes and rates wherever necessary to carry its traffic. Do you get similar routes and facilities from the Southern Pacific to carry your traffic in competition with the Morgan Line?

Mr. RAYMOND. Absolutely; and we give a similar service.

Mr. STEVENS. You give just as good service and you get just as good rates and routes?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. Suppose the Southern Pacific should say: "We have just as good a line as is necessary. We have a satisfactory route and rate. We think, Mr. Mallory Line, that we will not give you any more through routes and rates, and we will decline to prorate with you. We have a perfectly good line of our own." Under the law at

present you could not force the Southern Pacific Railroad Company to give you through rates and routes to enable you to compete with your competitor. Then where would you be?

Mr. RAYMOND. We would work, as we do right up and down the coast, with their competitors—the Santa Fe, or the M., K. & T.—reaching the same country, as is the case on the coast.

Mr. STEVENS. Then you would not want to be placed in an even situation with the Morgan Line?

Mr. RAYMOND. I contend that we would be in an even situation with them, because we have rails to Dallas and to Fort Worth and to all the other important points just the same as they have.

Mr. STEVENS. Suppose the Southern Pacific—as railroads sometimes have been known to do—should influence the actions of all the other lines that reach common points, and you could not get through routes and rates with them, what would you say?

Mr. RAYMOND. I can not imagine that condition prevailing.

Mr. STEVENS. You do not think that condition is likely to prevail?

Mr. RAYMOND. No, sir; I do not.

Mr. STEVENS. And you think it would be entirely safe to leave this question open to the good faith and good will of the railroad companies, and not have the power to compel them to allow competition in a case such as I have stated?

Mr. RAYMOND. I do where a reasonable rate and route that is satisfactory to the public is already in existence.

Mr. STEVENS. And where that reasonable route is entirely dependent on the sufferance of the railroad company?

Mr. RAYMOND. I do not think any of them are that way, in the companies that I represent, in the country we reach.

Mr. STEVENS. If the railroad companies do not care to give you a through rate, and a satisfactory one now exists—if they should choose not to do that, and you have no power to compel them to do it—are you not existing on sufferance?

Mr. RAYMOND. You can put it that way if you wish; but it is unreasonable from a business standpoint to say that Railroad A is not going to protect its interest against Railroad B from competitive ports.

Mr. STEVENS. Do you have through rates and routes with the Texas Pacific and with the M., K. and T.?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. And the Santa Fe road?

Mr. RAYMOND. Yes, sir.

Mr. KENNEDY. If any one of those roads should quit you, and do its business exclusively with the other line, of course you would be forced to withdraw your traffic from them and give it to some one else?

Mr. RAYMOND. And give it to some one else. There is no objection in the world to anybody coming in and going on the ocean and handling business at these ports with the railroads if they want to voluntarily, and if they can give the same sort of service. But to put in the hands of the commission the power to force a connection and to force a division, irrespective of the value of the property and the service that the lines are giving, I think would be a mistake, from my viewpoint.

Mr. KENNEDY. Let us look at that proposition from the other side of the question. You named four railroads that connect down in that southern territory with which you have connections. Suppose your line and the Morgan line should sever your connections, say, with two of those railroads and refuse to make a joint rate with them and transfer all your business to the other two roads; what would they do?

Mr. RAYMOND. They would have to put on another steamship line.

Mr. KENNEDY. Is that good economy, taking the whole transportation business as one big problem?

Mr. RAYMOND. No; but that would be a case of the survival of the fittest. The Interstate Commerce Commission could not regulate that. They could not stop you and me from putting on a line of boats from New York to Savannah if we wanted to and had the money.

Mr. KENNEDY. No; but suppose there is a railroad there that ought to have the right to ship over your line: They could compel you to make a through rate with them as well as with the other two roads.

Mr. RAYMOND. I doubt whether they can do that. That is a matter, of course, that our attorneys would have to handle afterwards. But unless they can place the sailing vessel and the barge and the "tramp" unattached vessels under the act to regulate commerce, I have not any fear of our port-to-port traffic ever being under their jurisdiction. I say that because I believe in the wisdom of this committee and of Congress, and they would not do it.

#### REGULATION OF ISSUANCE OF STOCKS AND BONDS.

#### STATEMENT OF MR. ARTHUR C. GRAVES, OF NEW HAVEN, CONN.

Mr. GRAVES. Mr. Chairman and gentlemen, I shall confine myself this afternoon to addressing the committee purely on the subject of giving the Interstate Commerce Commission (as set out in the administration bill, which I hold here, known as bill No. 17536) the power to supervise the issue of capital stocks and bonds of railroad companies. One man can not compass everything, so I am going to confine myself to that. I understand that the subject has not been discussed so very fully before this committee. I want to say that I represent myself and certain stockholders and bondholders of railroad companies, the par value of whose securities is between two and three millions of dollars. And while I represent them, I will be very frank and say to the committee that I represent them more or less in a friendly and voluntary capacity. I am not under retainer. I have been led to investigate this subject because it attracted my attention some time ago when it first came into public discussion—I think in 1907. At that time Senator La Follette was in the midst of his campaign (if you want to call it such) or his agitation of the view that a large quantity of the capital stocks and bonds of the railroad corporations was water; that railroad rates depended upon the par value of the capital, and that therefore Congress must take hold of the matter and give to the Interstate Commerce Commission power to regulate it. I shall refer to that later.

I want to say, in the first place, that I believe in a reasonable regulation of the railroads. Their economic function and their relation to

society are too important for us to lose sight of that side of the matter. But, at the same time, we must distinguish between reasonable regulation and that which borders on the actual management or control of railroad affairs. The owners of private property must control and manage the affairs of that private property. The right to regulate is not necessarily the right to manage, and it is not the right to destroy.

I simply wish to premise my remarks by saying that the railroads have two functions and occupy two relations. Their business is a public business, in that it is fraught with great consequences to the public. But the property is private property. This morning something was said about the railroads being in the nature of a public highway. That statement, I apprehend, is too broad. The courts have never given any countenance at all to that theory. You may read the Supreme Court cases and you will find nothing to countenance the idea that the Federal Government can take hold of and actually manage the railroads on the ground that they are purely post-roads or that they are public highways, because, while they are public ways, the property which makes them public ways is private property. The boards of directors of the railroads are quasi trustees for the public just so far as the public interests go; otherwise, they are quasi trustees for the investors and for the stockholders. I am here this afternoon particularly to plead for the stockholders.

I now want to give a brief history, as I understand the question, of the doctrine of either physical valuation or supervision by the Federal Government of the stocks and bonds of railroads.

So far as the public is concerned, I think I may say truly—and when I make these remarks, I hope the gentlemen will understand that I mean nothing in any personal way whatever; I simply mean to state the facts—that the question came prominently before the public for the first time when the Senator from Wisconsin conceived his theory that rates were principally dependent upon capitalization; that the capitalization was largely “water;” and that, therefore, there was a very great evil which must be remedied.

Mr. ADAMSON. Physical valuation would be a much more reliable guide than regulating stocks and bonds, would it not?

Mr. GRAVES. Very much more reliable; and I am going to come to that point later. It would be very much more reliable.

Mr. ADAMSON. And it would not raise any constitutional question at all.

Mr. GRAVES. It is very much more reliable; and as I proceed I am going to show that the physical valuation, as railroad rates are now, is simply one element, and it is not an element which must be taken hold of in an administrative capacity by the Federal Government. It is an element which, if considered at all, must be considered by judicial bodies in inquiring into all the elements which make up reasonable rates. That I will come to later, unless you wish me to speak on it right now.

Mr. STEVENS. Have we not the power to have an administrative valuation made, and make it *prima facie* evidence for judicial inquiries for whatever it may be worth?

Mr. GRAVES. Yes; I apprehend that the Government has that power, but with this qualification—that it would be only *prima facie* evidence, and that it would simply change the burden of proof and throw it upon the railroads.

Mr. ADAMSON. It could only be used as an incident or element in determining what a railroad rate should be?

Mr. GRAVES. That is all; and how long will it last? It may last one year; it may last six months. The traffic of the country may change so much through the erection of new terminals, etc.—the course of commerce of the country and the valuation of the real estate simply as real estate may change so much—that a physical valuation to-day may be good, and six months hence it may be bad; or, perhaps, it may last only for two weeks. I do not know.

Mr. STEVENS. Are you not a little too broad there? It would be subject to explanation and additional proof; but that is all, is it not?

Mr. ADAMSON. It is only a circumstance; and the value of the circumstance may be changed by other circumstances.

Mr. GRAVES. Yes; that is all. I do not know whether I am too broad or not. I really think the physical value of railroad properties, when you take their relation to individual rates—because, after all, we must deal with individual rates; the idea of the federal commission taking hold of an entire schedule very rarely comes up—

Mr. STEVENS. But, you know, there are cases pending now where the railroads have raised the point that the rate is confiscatory; and to prove it they are offering the actual valuation of their properties. I know of some cases of the kind that are pending right now in the federal courts.

Mr. GRAVES. Yes; there are some cases of that kind. Suppose they do offer that evidence. The federal court has the power to appoint a master, or the Interstate Commerce Commission, if the hearing is before it, has the quasi judicial power to investigate into the physical valuation of the railroads, to see whether the return is a reasonable return on that value.

Mr. STEVENS. But, right there, let me ask this question: In the course of a proceeding of that kind, is it not convenient and economical and speedy that there should be in the hands of the Government evidence of a similar character from its standpoint, to rebut and offset the evidence of the railroad companies? It is not a matter of necessity for the public welfare that something like that should be at hand—both of them being subject to whatever explanations and amendments, etc., the courts might admit?

Mr. GRAVES. Frankly, I think not. I say that for the reason that, after all, the question of a reasonable return to a railroad company can only rightfully come up when you are treating the schedule of its rates alone, as an entirety. If you take an individual rate on individual transactions, or a certain schedule, after all the courts are coming more and more to recognize the principle that it is not the cost of the service to the carrier that should control, but it is the value of the service to the shipper or the commodity.

Mr. ADAMSON. It is possible for the Government, at reasonable cost, to ascertain approximately the physical value of a property at a particular date, is it not?

Mr. GRAVES. Do you ask me whether it is lawful?

Mr. ADAMSON. I say, that is possible; is it not?

Mr. GRAVES. It is possible, and they have that power now.

Mr. ADAMSON. It is also possible, and at reasonable cost, to learn approximately the amount of assets the road has in return for the stock it has issued, and the amount of bonds that are out, is it not?

Mr. GRAVES. Yes; and it has the power now.



Mr. ADAMSON. Why is it not proper for the Government, then, to avail itself of all that information and use it in determining what rates ought to be charged without going further and attempting physically to control the issue of stocks and bonds?

Mr. GRAVES. Exactly so, and I apprehend that you have (if I may use that slang expression) "struck the nail on the head." President Taft, in one of his speeches—it was in his speech of acceptance—said that the Interstate Commerce Commission now has the power, under proper circumstances (meaning as a quasi judicial body), to make a physical valuation of the railroads, and, if the question of a reasonable return on a schedule of rates comes up to take the physical valuation of the railroads and see whether that rate yields a reasonable return on the present value; and in determining that present value the par value of the stocks and bonds outstanding is simply one of the elements of evidence. It is not controlling. It is not the return on the par value of the stocks and bonds. It is not the return on the market value. It is simply an element of evidence. That is all it is.

Mr. KENNEDY. When railroads are originally built, they appropriate property in the name of the public. It is the public that takes the man's private property for public use. The legal title to the real estate ordinarily goes to the corporation appropriating it.

Mr. GRAVES. Yes.

Mr. KENNEDY. But it is the public that takes, as I understand, in every State in the Union.

Mr. GRAVES. The public that takes?

Mr. KENNEDY. It is the public that takes the private property, under the Constitution.

Mr. ADAMSON. Otherwise, condemnation would not be permitted.

Mr. KENNEDY. It takes private property for public use. The authority is granted by the legislatures of the States, or the Legislature of the Nation. The public, then, in that procedure, where the public takes private property, permits this trustee—representing, as you say, two sets of beneficiaries (the public and the investors), which is correct—to go forward and issue securities representing the expenditures for public use in the taking of that property and building this public road or public highway. The railroads invest millions of money; and they put out upon the public securities representing that investment, and they are sold.

Mr. GRAVES. Yes.

Mr. KENNEDY. You now propose to make a physical valuation of the railroad and fix rates upon that basis. Is that fair to the investor who has innocently bought its stocks?

Mr. GRAVES. Pardon me when you say "I propose." I do not propose, and I think it is a mistake to think that even the railroads are proposing in any very great number of cases to defend the reasonableness of their rates on the basis of their physical value. They have done that in two or three cases. As I understand, Mr. Congressman Stevens has referred to some case of the kind, and says that he knows of cases in which the railroads have defended their rates on the ground of the physical value of the property. But that has only been done in a few cases. The railroads are fixing their rates in almost every case on the principle of what the traffic will bear.

Mr. ADAMSON. The investor that Judge Kennedy spoke of ought to put the trustee in jail for swindling.

Mr. KENNEDY. I think that is true enough; but the investor buys on the market. So far as the public is concerned, when it has acquiesced through all this period of years in the watering of railroad stocks—when the legislatures of the various States and we down here in Washington have sat silent and permitted those trustees to go on and do that in representing the public—why does not the ordinary purchaser of railroad stock stand better in equity than does the public, which has neglected to look after this matter in the past? Why is not the investor in stocks, who buys on the market, the innocent purchaser, and why is not the American public the neglectful one that should stand the loss, if there be any, as a mere proposition of equity?

Mr. GRAVES. I understand what you mean; but I am not prepared to say, considering the nature of the railroad, and the relations which it holds to the public, that the relation of the public is so close that it must stand any share of the blame for stock watering, if such there has been, and that the loss must be thrown on the public. After all, my study has led me to firmly believe that in the case of almost all classes of public-service corporations, and certainly in the case of the railroads, the loss in overcapitalization falls upon the investor.

Mr. RICHARDSON. Has overcapitalization any relation whatsoever to making rates?

Mr. GRAVES. I do not think it has any.

Mr. RICHARDSON. None in the world?

Mr. GRAVES. I do not think it has any. Chairman Knapp testified before the Industrial Commission, as far back as 1889, in substance as follows.

Mr. RICHARDSON. Is that on the subject of overcapitalization?

Mr. GRAVES. Yes.

Mr. RICHARDSON. I should like to hear it.

Mr. GRAVES. As long ago as 1889, before the Industrial Commission appointed by Congress to investigate this matter of railroad rates, he testified as follows.

In reply to a question, Mr Knapp said:

I have not seen any instances in which rates have seemed much to depend or be influenced by the capitalization of the road.

Q. Have you never seen such a case?

Mr. KNAPP. I have not. The capitalization of the railroad, I think, cuts no figure in this rate question.

Mr. KENNEDY. He was testifying about how rates were made.

Mr. GRAVES. Exactly.

Mr. KENNEDY. He was not testifying as to how they ought to be made.

Mr. GRAVES. Exactly; and if I take up the matter just where you left it and discuss the question as to how rates ought to be made, that involves the judicial principle which the courts have laid down governing the reasonableness of rates, and I will outline it as follows:

The common law early laid down the principle that where a person invested his money in property devoted to a public use, and it was in the nature of a monopoly, he was entitled to make such charges or rates as would yield a reasonable return on the property invested in that business. From that arose the idea that, assuming the capitalization to be the correct measure of the value of the property engaged in that service, then his return should be a reasonable return upon the capitalization. However, the Supreme Court of the United States

time and time again has said that even in those cases the principal element is not the capitalization, but is always the physical value of the property; and the capitalization is merely——

Mr. KENNEDY. You say the Supreme Court has held that?

Mr. GRAVES. Yes.

Mr. KENNEDY. In what case?

Mr. GRAVES. One of the principal cases in which it held that was the case of *Smyth v. Ames*, where it said:

We hold that the basis of all reasonable calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value——

Here are some of the elements which the court says are matters to be considered in order to ascertain that value:

And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks——

There the court specifies not only the par value, but the market value——

Mr. KENNEDY. They are stating all the things that should be considered?

Mr. GRAVES. They are stating all the elements [reading]:

The amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by the statute, the sum required to meet operating expense——all are matters for consideration, and to be given such weight as may be just and right in each case.

Mr. KENNEDY. They are passing upon a matter that is a legislative matter.

Mr. GRAVES. No.

Mr. KENNEDY. The courts have always held that the making of a rate is a legislative act.

Mr. GRAVES. No; they are passing on the principles which should guide a judicial body in determining——

Mr. KENNEDY. Which should guide the Interstate Commerce Commission under the law as it stood.

Mr. GRAVES. Exactly; exactly. They are laying down the principles which should guide the Interstate Commerce Commission in determining the reasonableness of rates.

Mr. KENNEDY. Under the law as we directed them to go forward?

Mr. GRAVES. Yes.

Mr. KENNEDY. You have confused that with the idea of the correct way a legislature should make rates if we were making rates upon a theoretical and scientific basis for the railroads.

Mr. GRAVES. I have not meant to do so; and the distinction is very clear in my mind. In fact, I want to say that the legislature——

Mr. KENNEDY. We gave a letter of instructions to the Interstate Commerce Commission. The courts are now considering whether they are acting in accordance with that letter of instructions. In that bill we provided that in fixing rates, to help them to fix a proper rate, they might take into consideration the physical valuation of the railroads. That is a legislative matter. That authority we, as the legislature, gave them under our letter of instructions to them. But

now, in the final analysis, that decision can not have any effect as determining how the rates ought to be fixed when we are considering it as a committee of the legislature.

Mr. GRAVES. I will come to that; but I can only say, in direct reply to your question, that there is no body representing the Congress of the United States which has absolute power to fix as an entirety the railroad rates of this country. The railroads still have in their hands the initiative. I will admit that the Interstate Commerce Commission would like to have that power.

Mr. RICHARDSON. Are you not mistaken about the initiative?

Mr. GRAVES. The Interstate Commerce Commission thus far has this power, and this alone: It may determine what is a reasonable rate, after having found that the existing rate is unreasonable.

Mr. RICHARDSON. Are you not mistaken about that? In my opinion, the administration bill that you are talking about—the Townsend bill—gives the power to the Interstate Commerce Commission to initiate the rate.

Mr. GRAVES. They have the power to initiate rate.

Mr. RICHARDSON. They have that power right now, right under this bill.

Mr. GRAVES. But, as I understand it, they first step in and say that such rates are unreasonable, and that these rates are, instead, reasonable.

Mr. RICHARDSON. No, no. You do not state it correctly. The bill says that where the railroad proposes, and now has the authority to make a rate after giving thirty days' notice, the Interstate Commerce Commission can come in before that rate goes into effect and shall have the power to review it and say that it shall be initiated in that way. That is what this bill gives them the power to do.

Mr. GRAVES. Exactly.

Mr. RICHARDSON. Therefore the bill practically and in effect takes from the railroad the power to initiate any rate. It says "it shall not be initiated."

Mr. GRAVES. I agree with you. The administration bill, if carried to its logical extreme, will for the first time in the history of the country vest the entire rate-making power in the Federal Government. It will do that for the first time in one hundred and twenty years. I will frankly say that I do not like the bill; but I am not here to discuss that feature.

Mr. RICHARDSON. You do not like the administration bill?

Mr. GRAVES. No; I think it is very dangerous.

Mr. KENNEDY. The Supreme Court has held repeatedly that it makes no difference whether a rate is made by a railroad corporation, by the legislature of the State, or by the National Congress; that the making of a rate is a legislative act.

Mr. GRAVES. Exactly; it is.

Mr. KENNEDY. The railroad company has no right to make a rate at all, except upon the theory that we failed in our duty to do it.

Mr. GRAVES. Oh, pardon me. I disagree with you there.

Mr. KENNEDY. And when they do it, they do it by implication. They are doing a legislative act when they make a rate over their own road.

Mr. GRAVES. I should disagree with you there, in this particular: A railroad has a right to make rates, because the charter of the State

which gave it the permission to engage in interstate commerce—a right which it possesses inherently as a citizen of a country, and a right which it did not get under the Constitution or from the Federal Government—gave it the right to make its own charges. The railroads have that right under the natural law; but not as legislative bodies, and not because the Federal Government has failed to exercise it.

MR. KENNEDY. But as that charter has been interrupted, the supreme court of Pennsylvania has held that the property that the corporation had in the road, the property that it got for its money (the money paid for stocks and in building the road) was not any private property in the road itself, but a contract with the public that it should take a toll forever, which should be a reasonable toll; that, the fixing of that toll was a legislative act; and that the railroad had a right to fix the rate, because the legislature had not done so.

MR. GRAVES. Yes; and the legislature has given it to the railroad company.

MR. KENNEDY. It has given it the right to take a reasonable toll. That is in its contract.

MR. GRAVES. Yes; that is in its contract.

MR. KENNEDY. That is an implied condition in its contract.

MR. GRAVES. That is an implied condition in its contract. It is a right which moves from the creative body to the creature. The creative body is the state legislature which gave the charter to the corporation. The creative body is not Congress.

MR. KENNEDY. There you are wrong again. Under the Dartmouth College case, when the charter is made, the two contracting parties are not the corporation and the legislature of the State, nor the corporation and the State. The corporation is one party and the other party is the public, whom the State represented as a mere agent to make that charter for the public.

MR. GRAVES. Exactly; I fully agree with you there.

MR. KENNEDY. We represent that same public as much as any State does. We are one of the public's agents.

MR. GRAVES. No; I disagree with you there.

MR. KENNEDY. And the question before us now is clearly within our letter of authority to act for the public.

MR. GRAVES. I disagree with you, if I may frankly say so, in this particular: The railroads of the country, with very few exceptions, obtained their charters from the individual States. Their right to charge a reasonable toll is the right which came under their charters from the individual States. Their right to condemn property under eminent domain came from the States. Their right to engage in interstate commerce is a right inherent in every citizen, and has no relation whatever to the Federal Government.

MR. KENNEDY. Let me correct you there. The power of eminent domain inheres not in a government, but in civil society itself, according to Blackstone and the old law writers on the subject.

MR. GRAVES. Exactly.

MR. KENNEDY. When you get the power of eminent domain from a State you get it because the people have authorized that State as their agent to act for them in giving you the power of eminent domain. The power to take the land does not come from the State.

The State never had it, except as it had authority from the public to act as the public's agent in giving it.

Mr. GRAVES. The power to take the land came from the State, as the agent of the people of that State.

Mr. KENNEDY. Not of that State alone, but of all the people.

Mr. GRAVES. Well, of all the people; but it did not come from the Federal Congress as representing the people.

Mr. KENNEDY. Oh, no. Congress did not have the right of eminent domain of this country any more than the State did. It had authority, I think, to grant you the right to take it if you are a railroad corporation.

Mr. GRAVES. I think I agree with you, in the main, on all of your points. The only thing that I wanted to lay emphasis upon, if I understood you correctly, was that I apprehended that the power of Congress over the rate making of the railroads is not quite so broad as the power of a State over the charges of a purely common carrier within its limits, not carrying interstate commerce, when that State has created the corporation. In the latter case the State is the creator of the creature, while the Congress is in no sense the creator of our railroad corporations; and our railroad corporations owe no prerogative to Congress. Mr. Chief Justice Marshall said, as early as the case of *Gibbons v. Ogden*, that the right to engage in interstate commerce is a right derived from the law of the land and one that is inherent in every citizen. He did not use exactly those words; but he did say that the Constitution did not create the right to engage in interstate commerce; it found it as an existing right, and simply gave the right to Congress to regulate it with respect to interstate business.

I want to speak for a moment about the necessity of this act. Is there any necessity for it from the point of view of overcapitalization? The control of capitalization by the Federal Government to remedy an evil ought to rest upon a necessity. We ought not to pass experimental legislation simply because we have a theory that it might do good. There ought to be a necessity. I respectfully submit that the necessity for such an act has long since passed by. The railroads are not now overcapitalized. Judging by their capitalization, the par value of their stocks and bonds outstanding per mile of road, the American railroads are not overcapitalized. They are not overcapitalized judging by their gross earnings, and the proportion of their gross earnings to the capital outstanding; nor in reference to the tonnage and their traffic density, which is the tonnage per mile, in reference to the capitalization. The American railroad is the most reasonably capitalized railway system of the world, save only those of Norway, Denmark, Sweden, and South Australia.

Mr. KENNEDY. To say that they are making earnings enough to pay dividends on their stock is rather begging the question. That, I think, is true. They are earning and will earn money enough to pay dividends on their stock. But if they had never had any water drawn in the stock, and had been restricted to a rate that would pay a fair dividend on the actual money they put into the construction of their roads, rates would be a great deal cheaper in this country than they are.

Mr. GRAVES. No, I beg your pardon; that is a fallacy. The railroad rates in this country have never had any relation to capitalization.

Mr. KENNEDY. I know they never have had, but in my judgment they ought to have had. I think that if the public interests had been properly looked after by the different legislatures of the States and the National Government our railroads would all be carrying freight at a great deal cheaper than they are. I take this view of a public highway—

Mr. GRAVES. The English roads have governed their freight rates largely on the theory of charging a rate which would be a reasonable return on the fair value of the property—not the capitalization, but the fair value of the property. And what is the result? The English railroad rates are very much higher than the American railroad rates.

Mr. KENNEDY. That is all explained—

Mr. GRAVES. The American railroad rates are the cheapest railroad rates anywhere in the world. Of course, there are these differences: They have a long haul.

Mr. KENNEDY. But look here: If you have known of great big blocks of pure water being put into railroad stocks, why has that been done?

Mr. GRAVES. I have not known of it in recent years.

Mr. KENNEDY. There were 29,000,000 of water in the case of the Alton road.

Mr. GRAVES. The Chicago and Alton?

Mr. KENNEDY. Yes.

Mr. GRAVES. The evil of the Chicago and Alton was not overcapitalization.

Mr. KENNEDY. But they put in 29,000,000 of water.

Mr. GRAVES. Pardon me—no.

Mr. KENNEDY. Somebody must pay dividends on that, and those dividends must come from rates.

Mr. GRAVES. Mr. Commissioner Clements made that statement in New York. I wrote him a letter and disputed his statement, and asked him if he could submit any sheet or schedule of rates filed with the Interstate Commerce Commission showing that there was any change on the Chicago and Alton after he made that statement.

Mr. KENNEDY. But does not that prove that the Chicago and Alton rates were too high to be simply remunerative when they accumulated this \$29,000,000 to give to their stockholders?

Mr. GRAVES. No, no; because the Chicago and Alton rates had no relation whatever to the capitalization. They were built purely on the theory of charging what the traffic will bear. And experience shows that if you build railroad rates on the theory of what the traffic will bear you will have lower rates than under any other theory. The commerce of the United States will begin to flag, and it may be said that you will sound the death knell of the commercial supremacy of the United States, so far as our internal commerce is concerned, the moment there is given to the Interstate Commerce Commission the right to absolutely fix or take the initiative in fixing railroad rates on the theory of charging a reasonable return on the real value of the property.

Mr. KENNEDY. Then you are wedded to the idea that as the country grows up the railroads ought to put more water into their stock, and practically absorb all the increase in value of the whole country?

Mr. GRAVES. I am not; I am not. I am absolutely convinced that in the long run the control of American railroad capitalization by the

Interstate Commerce Commission means one of two things: Either (1) the languishing of the transportation industry of the country, or (2) overcapitalization. Why? There is no experience which teaches us that a government can construct or invest money in great public works cheaper than the individual who is doing it under the incentive of return on the investment. On the contrary, the extravagance of governments is far more dangerous than the extravagance of the private individual.

Again, the crucial point of the American railroad system is this: The American railroads were confronted very early in their history by rapidly declining transportation rates, partly because of competition, but mostly because railroad rates were charged on the theory of what the traffic will bear; and they constantly lowered their rates in order to get greater traffic, knowing that the less you charge your shipper the more your shipper will give you of goods to be transported. Again, under the incentive of securing a return on the property, which had nothing to do with the rates, the railroads endeavored to lower their cost of transportation. The result was that little by little economies were introduced which the railroads learned by experience greatly lessened their operating expenses and made possible larger net earnings. This, in turn, reduced transportation rates. At the same time it was very evident that transportation rates, when charged under the theory we have been following in America, could not yield a reasonable return on the par value of the stocks and bonds if the railroad was capitalized on the theory of the foreign railroad. And what is that?

There is a demarcation (not a very plain one) which depends largely upon the personal element as to when an improvement should be charged to earnings and when it should be charged to new capital. Anything in the way of new construction and extraordinary betterments and additions for the increasing of your transportation plant really means entirely new property and may be charged to capital, whereas a mere change in order to keep your railroad property up to the proper physical condition, or the physical standard with which you started at the beginning of the year, should go to maintenance charges.

Early in its history the American railroad management adopted the idea of making out of its earnings excessive charges to the maintenance account for the purpose of building up the property. This, of course, led to what is really undercapitalization, because the average American railroad for the last twenty years has been spending on additions to its property and betterments and improvements far more than it has issued in stocks and bonds. This cry of "overcapitalization" is largely the cry of the uninformed man on the street who does not understand the subject.

The English railroads are capitalized five and a half times as highly as the American railroads. The capitalization of the American railroads at this time is about \$67,000 per mile. The capitalization per mile of road of the English railroads was, in 1905 (and it has not varied much in the last three or four years), \$273,438 per mile. The German roads are capitalized at about \$102,000 per mile. The French roads are capitalized at \$133,000 per mile. I could go on in that way throughout the list of all the railroads in the world. And I will remark here that the astounding thing about this is that you



would expect the railroads of America to be, in one point, more heavily capitalized. Why? Because the American railroad laborer is paid higher wages than any other laborer in the world. One of the reasons why the English and the French and the German railroads are so much more heavily capitalized than ours is because of the strict observance of the theory that every addition to your property which is not in the nature of a maintenance charge should be charged to new capital, and against it you must issue stocks and bonds. The result is that the capitalization of those roads is growing up just as fast as they add to the value of the property. American railroads are also issuing stocks and bonds; but they issue them at a very much less rapid pace than the increase in the value of the property. That is the reason why it is that since the early days of the buccaneers in railroad transportation (I refer to the days of Jay Gould) the American railroads, after seventy-five years of existence, notwithstanding the storm and stress through which they have passed and the awful abuses that have occurred (and there have been very serious ones), emerge as the finest transportation system in the world.

MR. KENNEDY. Have you something there in the nature of a brief, or would you care to prepare something and file it? We shall have to adjourn now.

MR. GRAVES. I will prepare something; yes, sir.

(Mr. Graves was thereupon given permission to file a brief of his further remarks.)

MR. GRAVES. I should like to close with just one remark, and that is this:

I respectfully submit, gentlemen, that the burden of proof lies upon the Interstate Commerce Commission, or upon the administration, to prove that this bill is actually necessary or wise in the face of these facts: The American railroad system is the most lightly capitalized system of the world; the American railroad system charges the lowest freight rates of any system in the world; the American railroad system pays higher wages to its laborers than any other railroad system in the world; and the American railroad system is in finer physical condition than any other railroad system in the world. Those seem like pretty broad statements, but, in general, they are true.

Thank you.

(The committee thereupon adjourned until to-morrow, Thursday, February 17, 1910, at 10 o'clock a. m.)











# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XX

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

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THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.



## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Friday, February 18, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Judge Knapp, we are prepared to hear you. But before that, Mr. Stenographer, you may insert in the record a letter from Mr. M. A. Low, general attorney of the Rock Island lines, as follows:

ROCK ISLAND LINES,  
LAW DEPARTMENT,  
*Topeka, Kans., February 10, 1910.*

DEAR SIR: I have read with interest the report of the hearings before your committee, with respect, among other things, to the provisions in pending bills giving a shipper the right to route his freight, requiring the carrier to quote rates, not only on its own line but upon the lines of connecting carriers, and making it responsible for damages occasioned by erroneous quotations, and providing for the through movement of freight cars beyond the line of the initial carrier.

The witnesses seem to have testified on the theory that the action of carriers, in accepting or declining freight offered for shipment to points beyond their line, is voluntary. Under existing laws, through routes, through rates, and the division thereof among the several carriers, may be fixed by the Interstate Commerce Commission, and if the pending amendment with respect to the routing of cars is adopted, the through route may be fixed by the shipper. Under existing laws, the shipper may tender freight to a carrier consigned to a point beyond its line and require it to issue a through bill of lading, the effect of which makes the initial carrier liable for all damages received by the freight, except that occasioned by an act of God or the common enemy, either on its own line or the line of the connecting carrier. Furthermore, the initial carrier is, at his peril, in the absence of expressed direction by the shipper, required to send the freight by the route carrying the lowest rate. The shippers seem to base their contention that they ought to be permitted to route their freight, on the ground that they pay for the transportation, and therefore ought to be permitted to say over what lines it shall move, and that this privilege is valuable in that it affords them an opportunity to reward their friends and punish their enemies, and that it may assist them in forcing railroads to purchase their commodities. There might be something in this contention if the parties stood on an equal footing. The shipper may or may not, as he pleases, give his freight to a particular carrier, and when he has delivered it to a carrier for shipment and paid, or agreed to pay, the freight, the carrier is bound to transport the freight with reasonable dispatch, being liable for the default of all connecting carriers. It does not seem fair to permit a carrier which is forced to enter into a contract to transport freight beyond its lines, and to become responsible for damages occasioned on connecting lines, to choose the agencies which will, in its opinion, best perform the contract which has been forced upon it. The shipper must pay the freight, but the carrier may not be able to fix the amount. If the rate quoted covering its line and connecting lines is too high, it subjects the carrier to an obligation to refund; if through a mistake of its own agents, or the agents of a connecting carrier, too low a rate is quoted, if pending amendments become a law, the initial carrier must, at least in the first instance, stand for the damage.

As to the through movement of freight cars, it was suggested by Mr. Lincoln that if the initial carrier accepts freight destined to a point on its line, it must carry it in its own cars to that point; but if there is no traffic arrangement, the shipper would have to arrange for a reshipment at the end of the line of the initial carrier. This view of the situation overlooks the fact that the law requires any carrier to which freight for an interstate shipment is tendered, to contract to carry it to the point of destination, even though that point is beyond its line. It is the duty of a common carrier to provide facilities for the reasonable performance of its obligations as a common carrier on its own line. It is not, however, required to provide such facilities for the carriage of freight on the lines of other carriers, and leaving out the legal proposition that the forcing of one carrier to deliver its equipment to a connecting carrier for use on a line of the latter is a taking of property within the meaning of the Constitution of the United States, for which compensation must be provided, it seems to me that a provision requiring a carrier to send its equipment off its own line, under all circumstances, would be harsh and inequitable, and that it would impede rather than facilitate the movement of freight. Under such a law it would be the duty of every carrier to provide not only sufficient cars to transport the freight offered for transportation on its own line, but on the line of every other connecting carrier; and it would be liable, not only for its neglect to provide sufficient equipment for its own line, but for the neglect of connecting carriers over whose lines a shipper might require it to route his freight. If a shipper insists on routing his freight over a connecting line whose facilities are inadequate, ought the initial carrier to be required to supply the deficiency, or to be made liable for damages occasioned by such insufficiency? Ought not a carrier which is compelled by law to select one of several agencies and to become responsible for its acts, to be permitted, within reasonable limits, to select such agencies?

In the testimony of Mr. C. A. Jennings, of Chicago, it was suggested that if he were not permitted to route shipments it might result in his having to pay mileage on empty cars returned over a route different from that upon which the loaded car moved. Such a case is probably fully covered by existing laws. It is the duty of a carrier to move freight over the route carrying the lowest rate, and if the shipper should advise the carrier that empty cars must be returned over a given route in order to avoid the payment of mileage by the shipper it would clearly be the duty of the carrier to adopt such route, and if it arbitrarily selected some other route and the shipper should be damaged the carrier would be liable.

Very respectfully, yours,

M. A. Low.

Hon. J. R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

You may also insert a memorandum submitted by Daniel H. Hayne, chairman of water-line meeting, held in Washington February 1, 1910, specially representing the Merchants and Miners' Transportation Company and other independent water lines, as follows:

*A memorandum submitted by Daniel H. Hayne, chairman of water line meeting, held at Washington, February 1, 1910, specially representing the Merchants and Miners Transportation Company, and other independent water lines.*

[Relating to H. R. 17536.]

*To the honorable chairman and Members of the House Committee on Interstate Commerce:*

The single question to which this communication is addressed is section 9 of House bill 17536, which is intended to confer upon the Interstate Commerce Commission the power to establish through routes where one of the connecting carriers is a water line, notwithstanding a reasonable and satisfactory through route exists.

What we understand the committee desires is to be informed (1) wherein the present bill is injurious to the water lines, and (2) how may it be corrected by amendment.

The law at present confers this power on the commission when one of the connecting carriers is a water line, in such instances "where a reasonable or satisfactory through route does not exist."

The proposed amendment in these bills cuts out the proviso "where a reasonable or satisfactory through route exists" but leaves in the provision applying to the local haul of a water line without any proviso whatever—that is, they would confer upon the commission power to create a through route and rate by rail and water, notwithstanding a reasonable and satisfactory through route and rate already exist.

## THE AMENDMENT WE PROPOSE TO THE TWO BILLS TO CURE THE PRESENT DEFECT.

It may be convenient here to refer to a change which may be made in the bills which will not prevent the Interstate Commerce Commission from making any through routes over a railroad or in conjunction with a connecting water line where no reasonable or satisfactory through route, either over a rail line or over a rail and water line exists. It seems to us the public interest may require the opening up of a through route where there may be no reasonable or satisfactory existing through route. It is therefore not, and has never been, our intention to urge denial of any public policy that seeks to establish a through route over a rail and water line when there is no other reasonable or satisfactory route available.

We have tried to state this plainly, so that our purposes may not be misunderstood.

The amendment which we think will accomplish this is the following:

After the word "character," page 19, line 10, of S. 5106, and page 18, line 23, of H. R. 17536, insert:

"And provided that this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists; but this shall not exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carriers' water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water."

That there is neither necessity nor demand nor public purpose to disturb the great marine acts and water transportation as such seems acknowledged, and it is but proper that such should be clearly stated to remove all doubt in the language of the proposed bills.

## THE IMPORTANCE OF THIS QUESTION IN ITS RELATION TO THE PEOPLE.

This question should be considered broadly without reference to special interests and with a view of the public welfare in mind, as the main consideration, and to do as little harm as we may to the transportation facilities of this country in the accomplishment of this purpose.

It would not be consistent with the magnitude of this great question were it to be considered superficially or hurriedly. The stake to the American people in ultimate results is fraught with great potentiality for good or evil.

With your indulgence, we may briefly refer to the cardinal distinctions between rail transportation and water transportation, for without this the true bearing of our position is lost. We must, if we be fair, take our departure at this point.

The line of demarcation between land transportation and water transportation has been drawn at the shore line and should remain there.

## SOME FEW OF THE DETAILS WITH WHICH NAVIGATION IS ALREADY BURDENED.

The vessel is built under governmental approval, equipped as directed by law, subject to annual inspection, and must be maintained as the inspectors may direct. She must be officered by men licensed by the Government and carry the number of crew directed, and must be employed only as licensed, and when employed is entirely subject to rules and regulations. Every move she makes is known to various governmental departments. She is, as it were, chaperoned in every move she makes, being subject to a system of laws having no counterpart on land; her owners, officers, and men have liabilities unknown in land carriage; she is subject to confiscation for various infractions, and by the maritime world is treated as a sentient being, answerable for her own wrongs. (*The Osceola*, 189 U. S., 158.)

Her master has powers imposed by the maritime law as adopted in this country (and beyond the control of her owner), to charge the ship, to charge her cargo, to sell or hypothecate either or both; to sacrifice one for the other, and stamp the remaining parts with the high privilege of the maritime lien. Once free of her moorings or anchor, and her owner may not even travel on her, if a steam vessel unlicensed for passenger trade, and this applies whether she is engaged as a common or private carrier. She must enter and clear, must put her seamen under articles before leaving port; may only engage and discharge them in a manner specified.

Even the character of the bill of lading she may issue within certain limits is fixed by statute.

She has nothing in common with land carriers.

Every policy of the law is to keep her safe but to facilitate her employment.

To limit the free field of operation is such a blow at the ancient and present policy of the people that legislation suggested to that end would excite public amazement.

The water carrier is already freighted with regulation and restriction almost to the sinking point, and to such extent as to lighten the load, certainly not to make it more oppressive. The gradual decline of the merchant marine has aroused the people, and the public tendency is now to enlarge the policy of fostering the merchant marine by removing and not adding restrictions, and the people are asking its freedom that the public may receive the benefits of free, open, and unobstructed water transportation, with its natural, competitive benefits.

This basic difference must be continually held in mind if we are to consider this question intelligently and establish rules of conduct with a full knowledge as to where they will lead.

The general trend of all legislation outside of the transportation acts, and indeed in some of the transportation acts now before Congress, is to preserve the distinction between rail carriage and water carriage and where water carriage is named provision is made for the fullest investigation and separate treatment. (See the elaborate treatment of it in H. R. 18682, relating to navigation laws, introduced at this session.)

At no time in the history of the legislation in this country, except in the one instance to be referred to, has there ever been an effort to include water transportation when undertaking to regulate matters standing upon an entirely different basis, as witness the amendment of the employer's liability act, which at first included water interests, but was finally amended to exclude them, the reason for this being that there is now among the Revised Statutes more than 450 sections affecting every phase of water carriage, amplified and extended by more than 100 pages of regulations by the Board of Supervising Inspectors of Steamboat Service, and the maritime law, as administered in this country, gives to a seaman injured in the service of the ship his wages, his keep, and reasonable cure, even when his injury is the result of his own negligence.

This policy has been pursued because of the difference in conditions of water routes and the necessity of holding all those conditions in mind in regulation by law.

The distinction is also drawn between natural and healthy competition on the one hand and restricted competition on the other.

These basic differences may be considered up to this time as influencing all prior Congresses in its action. The confusion which has heretofore existed in the minds of many, and which is at present in danger of developing into laws which may bring on disaster to water interests, is a tendency to include all interstate traffic in ostensibly corrective laws aimed at abuses and conditions which exist only in one branch of such commerce.

It will be doubtless conceded where it is found in either the industrial or transportation field that fair and natural competition should be let alone with its inherent corrective elements. We can not improve on natural methods by artificial rules of conduct without the danger of producing inelastic narrow regulation, and even if they be not fruitful in subordinating the public welfare to the benefit of selfish and private interests, they at least are fruitful of bad, even if they be unforeseen, results.

This is only another way of saying there is no necessity for laws where there are no abuses to correct, thus leaving a measure of liberty for full development along natural and unobjectionable lines.

It may be stated as a truism that to correct a local abuse by a law general in application is bad legislation and more likely than not to make such doubtful artificial cure more harmful to the public than the general course of a simple malady which is fast righting itself in nature's own way.

#### WEIGHT TO BE ATTACHED TO THE DELIBERATIONS OF CONGRESS.

This honorable committee will not be unmindful of the vast labors expended on this question in the past. Under the development of our jurisprudence the doctrine of stare decisis, while not binding, is entitled to great weight. This on the theory that unless there is a good reason to change existing law the prior consideration surrounding present laws should stand as a sound foundation.

This wise rule can be well invoked at this point. The action of prior Congresses should be given by this committee the credit and weight which is their just due, just as future Congresses may be and ought to be impressed by your deliberations.

The Government has expended enormous labor and expense in these investigations, and the results should not be lightly set aside.

#### CONGRESSIONAL ACTION.

The congressional select committee of 1885-86 which preceded the enactment of the interstate commerce act of 1887 elaborately investigated water routes under specially intended limitation.

Among all the questions propounded seeking to regulate rail lines the only question affecting water routes was:

"14. In making provision for securing cheap transportation is it or is it not important that the Government should develop and maintain a system of water routes?"

The scope of this inquiry brought out two points:

1. The benefit to be derived from unobstructed and free water transportation—its development and maintenance.

2. Whether or not it was desirable to regulate it.

(From circular of Senator Cullom, chairman of select committee, printed in appendix to Senate reports first session Forty-ninth Congress, 1885-86, volume 2, page 2.)

See also report of the committee, page 167 above reports, title "Interstate Commerce;" subtitle "Competition between waterways and railroads—water routes, the most effective regulation of railway charges—the emancipation of the waters a national necessity."

As to the developments before this committee with relation to water routes see Senate reports first session Forty-ninth Congress, 1885-86, volume 2, page 170, setting forth the committee's view of the importance of the subject.

Ibid., volume 3, pages 123, 205, 283, 366, 443, 487, 717, 772, 807, 972, 997, with relation to the public benefit to be derived by leaving water routes free from artificial regulation.

Mr. F. B. Reeves, of Philadelphia, Pa., was very positive on this point. He says: "I do not think it is possible to regulate it. I think it is better for all concerned, in the long run, that competition should go on" (p. 482).

Gen. Isaac J. Wistar said:

"My individual opinion would be that I would not lay another straw on the ocean trade. We have got it tied down now hand and foot by the navigation laws, and if it is not expedient to relax them, I certainly would not make them stronger. I think the rivers and lakes and ocean are the gift of God, and we should let them alone. If people want to run competition and ruin themselves, let them do so; that is a matter which will correct itself after a while" (pp. 520, 521).

Senator Cullom, chairman of the select committee, in his opening speech presenting the bill (original interstate commerce act of 1887) to the Senate on behalf of the select committee, makes it clear that railway regulation only was intended.

\* \* \* \* \*

"The bill is not intended to affect \* \* \* the vessels employed in the inland or coasting trade, even though they may engage in interstate commerce, as it would be if it were made to apply to all common carriers engaged in interstate commerce. \* \* \* It is aimed at the regulation of the railroad corporations." (Painter's Debates on Interstate Commerce, vol. 1, pp. 3, 4, and 5.)

At a later stage in the debate, Senator Cullom more explicitly said:

"The Senator knows that any system of regulating through rates that leaves one railroad in a position where it can take advantage of another in this country is unjust. The purpose of this provision in relation to water transportation is to so frame the section as that all American railroads, as well as those that run outside into Canada, shall have to come up to the provisions of the bill to some extent. There is no provision in this bill that at all interferes with water transportation unless it is operated under some arrangement with a railroad company or common carrier by rail by which it can take advantage of any other railroad that has no water connection at all." (Painter's Debates, vol. 1, p. 237.)

(This accounts for the language of the seventh section as to breaking bulk when read in connection with the parenthetical language of the first section.)

The act was substantially the bill proposed by the select committee of the Senate, and Senator Cullom was its substantial author and chief promoter. The bill was very fully considered in the Senate Committee of the Whole and various features of it extensively discussed and numerous amendments suggested, a few of which were adopted.

In the Senate (outside of the statements of Senator Cullom in presenting the bill and the discussion which took place in connection with the Conger amendment) nearly the whole discussion of the bill was as of a bill for the regulation of the railroad business, and it was wholly from that point of view that it was treated.

This was even more pronounced in the House.

Senator Cullom, in opening the discussion, made the statements hereinbefore quoted.

Senator Spooner said:

"The conditions of water transportation, as to cost, etc., are essentially different to that by rail. The river and the lake are natural highways, free to all; they are highways furnished ready-made, free of cost, for the use and benefit of all. No cost of maintenance and repair rests upon anyone as a condition of such use. If the river

needs improvement, or the harbor or the lake, the necessary expenditure is made by the general public." (Painter's Debates, vol. 1, p. 143, May 5, 1886.)

And in closing the debate, on concurrence in the conference report, Senator Cullom said:

"I undertake to say that the purpose of the bill, at least whatever may be the strained construction which has been placed upon it or which may be placed upon it by the transportation companies of the country, has been to facilitate commerce and to protect the individual rights of the people as against the great railroad corporations." (Painter's Debates, vol. 2, p. 333.)

The House (or Reagan) bill, which the House preferred to the Senate (or Cullom) bill, had no application whatever to water carriage.

When the House took action the resulting report of Mr. Reagan shows this intention very clearly:

\* \* \* \* \*

"The bill which we report (meaning the original interstate-commerce act of 1887) to the House, instead of adopting either of these plans, provides that the charges of the railroads shall be reasonable; that persons engaged in transportation of interstate commerce by railroads shall furnish without discrimination the same facilities for the carriage, receiving, delivery, storage, and handling of property of like character, and shall perform with equal expedition the same kind of services connected with contemporaneous transportation." (Reports of 1st sess. 49th Cong., 1885-6, vol. 3, filed Mar. 8, 1886.)

The hearings before the Senate Committee on Interstate Commerce of 1904 and 1905 show an equally emphatic determination of Congress to avoid confusing water routes in legislation directed against railroads. (Pp. 137, 180, 278, 819, 820, 821, 822, 823, 1241, 2089, 2095 of Vols. I to V, inclusive.)

These references, carefully considered, show what enormous labor and expense this Government has incurred in working out this question, and their consideration will show the absolutely emphatic stand on a definite and decisive policy of this Government from its inception; that is, to avoid, in an endeavor to correct railroad abuses, any harmful effect upon water interests which, as the congressional select committees have uniformly held, were the great regulators of rail rates; indeed, the special solicitude was the emancipation of water routes as a national necessity.

Coupled with this is the equally deep and well-founded solicitude to foster and encourage such interests, even to the extent of subsidy, to prevent the gradual and progressive decay of a once vigorous and then progressive enlargement of the merchant marine.

Prior Congresses have been as true to this issue as the needle to the pole.

And this has been so when there was no publicly manifested concern. Now the people are more than ever wrought up to protect water transportation and to encourage and upbuild it, and not to discourage it by drastic experimental regulation in no wise adjusted to its peculiar conditions. Especially is it desired not to confound it by inclusion with interests to which the remedial legislation is primarily directed, but which is of an entirely different character and can not logically be made to fit in with water conditions.

#### THIS INTENT IS CLEARLY SHOWN IN THE PHRASEOLOGY OF THE ACT ITSELF.

As far as prior Congresses could be induced to go was to incorporate in such transportation acts any common carrier "wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment)." These words show a policy of exclusion, not that of inclusion. When these words were incorporated in the original act (1887) and came up in the Hepburn amendment (1906), altered only by the addition of the brackets, the most determined effort was made by special interests to modify the language, but the effort failed without any organized effort on the part of the water interests, because the general policy demanded by the people was continually held in view and applied, and there was always some friend of the people on the committees who protected their interests. This phraseology, unfortunately, has received a most limited construction—too limited to conserve all the purposes of the act, which is the public welfare. As at present construed, water lines are considered by some to be included on through and not on local traffic. We must examine the act to determine what was the real intentions. Clause 7 of the act shows the intention in unmistakable language, and this fits in with Senator Cullom's explanation.

The clause in full is as follows:

"SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied,

to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act."

The above section is discussed in Snyder's Annotated Interstate Commerce Act and Federal Anti-Trust Laws (1906), page 146, as follows:

"The design of section 7 was to forbid devices on the part of the carrier, whereby, for the purpose of evading the provisions of the act, collusive arrangements may be resorted to to change time schedules, compel carriage in different cars, break bulk, or require a cessation, stoppage, or interruption to prevent the connecting carrier from performing his contract of 'continuous carriage.' \* \* \* such acts, if not done in good faith, but merely to evade the provisions of the act, are unlawful, and subject the offending carrier to the pains and penalties of the act."

The sole intention is made unusually clear to include a water line when acting in conjunction with a rail line in (as the clause says) any device to assist the rail line "to evade any of the provisions of this act." This is its meaning, both in the letter and spirit, and we may gather from what was before Congress to see how wisely our act was constructed.

#### THE ENGLISH RAILWAY ACT.

The basis of this act was the English railway act. There, as here, the purpose was to regulate rail lines and their incidents. There, as here, the abuses growing out of monopoly became apparent. The monopoly of the road bed resulted in the exclusion of the public's use thereof, and abuses in the way of special privileges to some, denied to others. There, as here, there was no intention to touch the water lines except where water lines were used by railroads to avoid the act.

In the English act it was deemed sufficient to cover railroads and water lines owned by railroads. In the language of the act, "Vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried," etc.

Our legislators, profiting by experience, carried the thought one step further and drew an act which corrected abuses in a more comprehensive way, yet permitted also in a more comprehensive way any legitimate water line to be legitimately operated, regardless of ownership. Why should it not be so? Why cripple the marine and our shipbuilding plants if we can find a proper way to handle the subject?

It was seen that there could be abuses through not alone the mere ownership of a water line by a railroad, but also by a water line not owned by a railroad, in collusion with a railroad and combining to evade the act. In the English railway act there is no safeguard to the public in such an instance.

The end of Congress's deliberation was to place upon the statute books a law which would prohibit abuses, whether on through business or on local business; whether the water line was owned by a railroad, or whether it was not so owned.

Therefore section 1 of the act, as explained by section 7, with relation to water carriers, contains the remedial legislation to attack a water line regardless of ownership, regardless of whether its business is local or whether it is through business, providing it is using devices to assist a railroad in defeating the act on interstate commerce.

This interpretation of the act gives it life; breathes into it the fullest power that the Interstate Commerce Commission could wish—certainly all the power the people intended. It admits Congress had a sensible intention. It is adjustable to every clause in the act; but right here permit us to declare most positively there is no other interpretation (just as it is true of every artificial interpretation) that will not run counter to the act in all of its parts, and the attempt to impute any other intentions to Congress (contrary to all that explicitly declared) has led to all the confusion and does Congress a very great injustice.

This is the only intention, the specially limited intention, the reasonable intention, as found in the Congressional Record, and the plain statement of the act, and it is the practicable method which clothes the Interstate Commerce Commission with the ability to apply all the remedial measures of the act, both to through business and to local business, where there is any occasion for it. Through business under such collusion is definitely covered. Local business is as definitely covered where there is such collusion, because the local business is in fact then not local business, but is through business under a collusive arrangement for a "continuous carriage or shipment."

This interpretation gives the fullest power to the Interstate Commerce Commission where it has in its decision determined that it has no power, and where it should have power to prevent the abuses aimed at by the act. Where there are no such abuses, then it is perfectly clear at least that the water local haul was never intended to be covered, and Congress intended this harmful agitation against its merchant marine to stop at the contact point of land and water.

We revert again to the statement that the unsettling agitation for laws can be justified only where the necessity for their existence is shown, and where there are no abuses Congress intended the water carrier to be let alone, in a natural and healthy competition to meet the varying conditions which confront water lines and which do not confront rail lines.

To carry the question further it was seen that great damage would be done of a character more greatly to be feared than even the correction of abuses to which the act referred.

I have mentioned this only to lead up to the statement that the interstate commerce act was elaborately and wisely considered; that it contains all the remedial powers to regulate all classes of water transportation in order to correct abuses; but it stops right there, and it should now be let alone.

The local business of a water line was left and purposely intended to be left absolutely free from artificial regulation except in the one instance where it was used as a device to evade the act (through connivance) by the rail lines, at which the act was aimed.

A reading of the act clearly shows this intention; the deliberation of Congress clearly shows this intention; the purposes to be accomplished as clearly show that this was the intention. This was the same intention in the English railway act, and to read our act differently and patch it up with incongruous, conflicting, and most likely unconstitutional amendments, invites the criticism that we are not paying sufficient attention to the idea running through this character of legislation to keep our various amendments consistent with the clearly expressed purpose from the beginning up to this point.

We may fairly state, therefore, that through rail and water transportation was included in a well-defined policy, and limited to the manner stated in the act, and that legitimate local business was never intended to be included in the slightest way.

#### THE PROPOSED ACTS BEFORE CONGRESS.

This brings us to the present amendment in H. R. 17536, how it will reverse this policy and by an inadvertence include the local business of a water carrier operated in a legitimate way, without abuse, and will lead to results which will gradually but as surely as night follows day deprive the people of this country of the valuable facilities of open competition on free and open highways—the surest means of rate regulation.

#### WATER INTERESTS ARE NOT UNDULY DISTURBED IN THE CONTEMPLATED CHANGE IN THIS TIME-HONORED AND WISE POLICY.

This amendment may not be considered an entirely new departure. Efforts were made in the Fifty-ninth Congress, first session, 1905 and 1906, to amend what was known as the Hepburn Act. The proposition was to strike out the words "provided no reasonable or satisfactory through route exists," and insert in lieu thereof the words "such authority shall extend to through routes and joint rates for transportation, partly by railroad and partly by water." This was a proposed amendment to H. R. 1297.

The Senate refused to give the commission such power, except where no reasonable through route exists. Subject to this provision, it did, by amendment 36, add: "And this provision shall apply when one of the connecting carriers is a water line."

This qualified application to water lines is entirely reasonable, yet so strong was the objection in the House to any character of water regulation that this very reasonable amendment was objected to, even though it referred only to the establishment of joint routes over water routes, provided no reasonable or satisfactory through route exists.

The House receded from its objection when it was seen that the clause "providing no reasonable or satisfactory through route exists" was included. But the elimination of this proviso places the water carrier, whether it be an individual with one vessel or many, absolutely and unequivocally under the act on local business.



REASONS WHY THE ELIMINATION OF THIS PROVISIO DOES BRING THE LOCAL BUSINESS OF A WATER LINE UNDER THE ACT.

It is an elementary rule that in the grant of a power there is conveyed all essential elements necessary to the use of that power. Authority on this point is abundant.

In the proposed act the Interstate Commerce Commission is intended to be clothed with a power to establish through routes when one of the connecting carriers is a water line wherever and whenever they choose to exercise that power. Such a power would be useless unless it carried further the incidental right to enforce upon the water line in its local business all and every section of the interstate commerce act.

If the commission is to be understood to exercise the power, even in a superficial way, it would require this.

If it is to be supposed that such a power is to be exercised with due caution and care, to ascertain the reasonableness of such a new venture and to protect the interest engaged in such an experimental through route, it will require the Interstate Commerce Commission to become informed on all the varying changes in the local business of a water line in not alone the details named in the act, but of all the financial information necessary to determine whether it could fairly, in justice to all other connecting carrier or carriers contemplated in such a venture, establish that route. Is it indeed not a fair statement to say no public commission established at this time with such enormous present labors has time to go into the labyrinth of such details to protect the financial end?

The objection from a business point of view has not been an arbitrary denial by the carrier to establish through lines, for indeed the increase of the channel's business develops and strengthens the arteries through which its lifeblood passes, and it is to be presumed through routes will be established by a water carrier in all instances in which it is safe to do so as a simple business proposition. The objection has been exceedingly rare and where it exists it has been really an economic one removed from the field where inelastic laws can properly deal with it, i. e., the undesirability in having a working connection not capable of performing through contracts satisfactory to the public and the inability to pay its debts.

The act, in the twentieth section, imposes a through liability upon the initial carrier. There is, therefore, necessary a very important inquiry as to the responsibilities to be so assumed and in knowing that it is solvent, with the certainty of the ability of the connecting line to pay its balances on freight movements. Not long ago the courts ruled certain solvent companies responsible for large sums, on the theory of a partnership, which could not then be collected from insolvent members in the line of transit.

Not the least of the inquiry is the method by which such a connecting line is run and whether its service is a satisfactory public service to indorse in a through movement. There are many services of water lines which are accepted by a shipper on his local business with a full knowledge of the risks he assumes, but this election would not be open to a shipper even under the right to route his freight without the knowledge secured (at long distance) by careful inquiry. The practical operation under these circumstances would require the commission to demand of all water lines, even on their local business, even more data than the act requires to comply with the proposed acts. Indeed, the water carrier would be under more hurtful regulation than any other class under the act.

The question of the inclusion of the local business would not depend upon the organic law but upon individual caprice, which may not at all times be constant in the change of the personnel of the commission, assuming, of course, that the present commission would not abuse such power. We are here dealing not with men, but with principles, and the principle should first be correctly settled in the law.

Indeed, without any intention to abuse the power conferred upon it, and with the very best intention, the present commission, following the principle decided in what is known as the Social Circle case (162 U. S., 192), recently ruled that having come under the act for one purpose brought the water carrier under the act for all purposes, even on local traffic. This ruling was reversed, but only after great effort, and then by the slender majority of one.

The ruling was as follows:

"A steamboat line agreed upon a joint rate with a rail line for certain passenger and freight traffic. Held, that it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the commission." (B. No. 2, May 4, 1908.)

The minority, expressing itself in most determined and vigorous language, that the reversal was wrong. This ruling, although reversed, was based on the ground that the acceptance of through business by the water line carried the necessary inclusion of

its local business also. Here, of course, was two distinctly different kinds of traffic and the distinction could be easily understood and maintained. How differently would it appear if the commission determined to apply such a ruling by holding that being brought under the act on local business for one purpose subjected the water line on its local business for all purposes. Unless the water interests are protected in the amendment hereinbefore such a ruling would only touch the necessary incidents to the exercise of the power.

This fear of the water line is not without foundation. They have passed through the experience.

Another dangerous element in this proposed act is that it is the first step ever taken by this Government to touch the local haul of a water carrier in any way, and it is a distinct and unauthorized trespass upon the people's will. Once take this step and the natural and well-defined boundaries always understood to exist between the two classes of service will be obliterated. I say it with firm conviction the broad power attempted to be conferred in the amendment, unless the water interests are guarded by the amendment we propose, will enable the complete effacement of the regulation of freight charges all rail by an easy method which the water carriers are unable, by organization or through financial ability, to resist. This has been fully set out in the statement submitted by Mr. Montgomery, and it is an ever present and ominous danger to the people. Mr. Montgomery has shown how the rail lines can very easily and quietly destroy such controlling competition.

The great cry which has gone up from railroad interests on the direct and potential effect of water transportation illustrates an even greater difficulty to the water carrier in the direct and potential competition between the regular water lines and the uncontrollable vessels. This class of service is so illusive and intangible that it can not be controlled by statutory law. Such a carrier is in nearly every instance a private carrier, and not under a common carrier under the law.

Such irresponsible charterers (wild carriers) for a specific voyage would be in and out of the business before they could be discovered, and a private carrier would have the power to eliminate the common carrier by water entirely and seriously affect the reasonable status of rail lines under the act unless the common carrier by water is left with as much freedom as possible to handle the conditions according to natural laws.

This represents a very large and dangerous class of competition which is the constant dread of the established lines, giving prompt, efficient, and safe service at reasonable rates, for such competition is not fair nor is it desired by the American people, but it will nevertheless continue.

It is not cheap competition with all the incidents of danger that involves in its use the breaking down of standard lines, but prompt, efficient, and above all safe service at reasonable rates that the people desire and which they should have.

The commission would be powerless to afford relief by artificial means if natural methods be denied to water lines.

#### SOME PRACTICAL OBJECTIONS TO WATER REGULATION.

##### SUMMARY.

1. It is objectionable because water transportation is founded upon conditions not analogous to railroad transportation, as pointed out by the select committee in its first report. It was there found that the public design, as has been the design of all nations, is to foster and encourage its merchant marine—consequently investment in vessel property—the building of ships (on which the great shipbuilding plants rely) and their operation.

Indeed, efforts are now being made to foster and encourage water transportation by ship subsidy for the purpose of building up and inducing investment in vessel property, which, because of the great risk and poor returns, has sought other channels.

To such an extent is this carried that important immunities are granted to the merchant marine under the statutes against certain losses; for example, the act limiting liability to the value of the vessel and the freight pending at the time of the accident; exempting against loss by fire at sea; exempting owners of vessels from errors of navigation; the registry statutes and others, the repeal of which is threatened in the twentieth section of the act and the amendments proposed at this Congress.

2. There is great risk and hazard in connection with water service not common to rail transportation, to secure acceptance of which requires, according to some view, even help of a fostering and encouraging character, certainly not an artificial blighting, drastic, experimental legislative regulation.

3. The specific inquiry propounded by the committees in charge of the interstate commerce acts was, to make provision for cheaper transportation, and as an inducement it was proposed the Government should develop waterways. (Inquiry 14 of

congressional inquiry of 1887.) This has been further illustrated in the convention of governors, called at the solicitation of the President of the United States and by the National Committee on Waterways.

Fostering and encouraging, which are synonymous with strengthening and upbuilding, are not interchangeable nor synonymous with regulation, and indeed a species of regulation which passes into control without the expense of ownership or its responsibilities, which, as applied, means the regulation on such a basis as to develop the refusal of capital to engage in such hazardous undertakings, and the gradual elimination of this remnant of the merchant marine. There is no exaggeration in this statement.

4. Constant changes are going on in water transportation conditions, which weigh heavily on lines trying to give an efficient, standard, and continuous service on schedule. It is necessary to meet varying problems of transportation (introduced by unattached vessels in the demise of the whole or part of the vessels under charter, or the offering of the remaining space at lower rates to complete cargo, etc.) on the revenues of a service which is competitive throughout—for water lines have no local territory and consequently have no chance to recoup from other sources, as the rail lines have.

Thus the accepted rule that rail rates are influenced by water conditions finds an analogous rule in water competition, where the regular lines' water rates are more or less controlled by the unattached vessels, which fact has been often considered in the annual reports of the commission. This gave rise in the committees of Congress to the suggestion that it would be impossible and undesirable to regulate such transportation by water, because of the free and open natural competition on a free and open highway, and that it should be let alone to meet a complicated situation in a natural way—as was expressed by the committee, its inherent conditions will correct itself if let alone.

Certainly it is not desirable that this part of the merchant marine be forced from its present position through the effect of any human mode of regulation when we have something better and not impregnated with error.

The following letter to the writer is from an authority on the above points:

\* \* \* \* \*

"The establishment of many of these lines has been accomplished only after years of careful work and the expenditure of millions of money. They have enjoyed no Government subsidies or land grants; they have neither exclusive right of way nor eminent domain; they are now exposed and always have been to the holdups and inroads of the tramp steamers who may at any time levy on their business or demand a ransom.

"The merchant marine has not only failed to keep up any reasonable ratio with the growth of the country, but its development has in many cases acted in an inverse ratio with the development of other lines of business.

"On one side the Government, following the people's desire, tries to construct and develop waterways as a help and relief to commerce and regulator of rates, while another department apparently seeks to tie some of the water carriers which operate on these waterways hand and foot, and to burden them with methods which they can not possibly endure in patience, and which will, if carried out, not only prevent new construction, but serve to speedily augment the great fleet of out-of-commission boats which now are rusting and rotting out in many ports.

"The action of the steamship lines of the Pacific brings tremendous emphasis to this point.

"If the intent of some is to break down these established lines which serve coast, rivers, and lakes, and to let conditions revert back to an original chaotic state from which organization will have to grow again, then the course is clear, and in many cases the pressure and burden need not be very strong or great, as some of our oldest and most respected companies have under present conditions had to resort to sacrificing insurance in order to keep up organization.

"The next point in interest is, What is to be gained by placing these burdens on the regular lines who sell tickets and bill freight beyond their terminal port? It can not be excessive rates or rebates, as water rates are, so far as we know, always lower than land rates, and owing to the ever present competition in any open waterway, the regulation of rates is practically automatic.

"The Government should keep in mind in its rulings and findings that at least 80 per cent of the merchant marine is engaged only from five to eight months out of the twelve, and those who do run for the twelve months have a lean season which is often operated at a loss. In other words, boat property in the great majority of cases can earn money for five to eight months of the year, but the interest charges, insurance, taxes, maintenance of docks, buildings, floating property, and salaries go on for the year.

"In twenty years wages have increased by a heavy percentage, coal has in many cases doubled in price, all ship supplies and foodstuffs are much higher, insurance rates are increased, damage and liability costs are much more and the costs of the new ships tremendously increased, and still a steamboat line whose regular tariffs are higher than they were twenty years ago is a rarity.

"The maintenance of ship yards may be apart from this question, but if the water routes are loaded with further regulation the past wailing of some patriots about the decline of shipping under the American flag will rank as a faint echo compared to the resultant cry.

"In conclusion, the interstate-commerce act was never intended to extend over open waterways where every man has an equal chance.

"To say to a line of steamers that they must make and publish specified rates and keep and publish their accounts in a specified way, while all other floating property engaged in business on the same waterway is free from such burdens because they do not care to ticket or bill through to some point remote from the waterway seems a clear discrimination against class, which is prohibited by the Constitution."

We may assert in the most positive language that there is not only no occasion for the proposed act, so far as it relates to water carriers, but that its tendencies are destructive, most unequivocally destructive, and will land upon the American people with even greater force than upon the carriers themselves. There is, indeed, no reason to invoke or to invite such conditions, and it is only held, if seriously held at all, by some who fail to take the whole subject under investigation. Under the proposed amendments herein stated all reasonable requirements will be subserved and the water carriers will be taken under the act only so far as public requirements seem to demand it and they will be left outside of the act, following the specific and well-determined policies expressed by the people through their representatives in Congress. A temporary breathing period can at least be secured to consider how much further they should be included as the practical operation of the law we now suggest works out.

The sum total will be that the commission will, under the act, then have ample power to inquire into abuses on any through or local movement and will be able to establish through routes when there is no through railroad and rail and water routes in existence.

Thus the water interests will be made to serve the convenience of the people where they should properly serve it and will still be left free to protect their existence from the unattached vessel and, indeed, from the greater danger suggested by Mr. Montgomery, and enabled to keep the level of rates where they should properly be.

The policy to leave the water lines as free as they can be safely left has not been at all overestimated by the people, and they can thus be utilized in their several spheres of activities in promoting the general welfare.

#### THE DANGER OF REPEAL OF THE GREAT MARINE STATUTES IF THESE ACTS ARE NOT AMENDED AS WE SUGGEST.

The importance of making the amendment herein suggested to the proposed act on the aforementioned grounds is no more important than the reasons underlying the suggestions for the latter part of that amendment, namely, "and transportation by water affected by this act shall be governed by all the acts and regulations applicable to transportation by water."

It has been the subject of great solicitude whether the twentieth section of the Hepburn Act does not repeal the great marine statutes established to encourage investment in vessel property, and thus accept the hazard of the great deep.

The present section 20 of the act provides that the carrier shall be liable to the lawful holder of the receipt or bill of lading (required by the act to be given) for "any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass," etc., and, further, that the company issuing such receipt or bill of lading and so made liable "shall be entitled to recover from the common carriers, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss," etc..

But section 3 of the act of 1893 (Harter Act) says:

"If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel," etc.

Again, section 4282, Revised Statutes, provides:

"No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel unless such fire is caused by the design or neglect of such owner."

And yet again, section 4283 provides that the liability of the owner of a vessel for any embezzlement, loss, or destruction of property, goods, or merchandise, done, occasioned, or incurred without the privity or knowledge of the owner, "shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

And still further, section 18 of the act of June 26, 1884, provides:

"The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending."

There is nothing in the act to say that the initial carrier where it is a water line shall be freed from through responsibility under the wise provision of such acts. And the act, as at present, is said to affect only through business under the specific terms of the act. Now, there is an attempt to include the local business of a water line in affecting a through route. Unquestionably it should be made perfectly clear that these acts and regulations are not repealed. There is sufficient danger in the phraseology of the present act. It is augmented by the proposed amendment. Were this disastrous consequence to follow, the last vestige of hope in the upbuilding of the water interests would vanish.

If the intention of Congress was to cover water carriers, is it conceivable that no special reference would have been made to these statutes and the high privileges thereof, especially designed to aid vessel owners and build up our shipping?

Is it conceivable that a public policy which by so generous enactments sought to foster a merchant marine (as do all nations so zealously guard their shipping) shall also seek to restrict its independence and regulate its rates by anything other or different than market conditions? And there has been not a single public request to do so.

#### CONSTITUTIONAL QUESTION RELATING TO THE INTENDED GRANT OF POWER TO THE COMMISSION TO ESTABLISH THROUGH ROUTES WHERE A REASONABLE AND SATISFACTORY THROUGH ROUTE EXISTS.

1. Though not at this time desiring to raise any technical question, we would be disingenuous if we failed to express our misgiving of the validity of any act directed against one class when impossible of application to another class in the same character of business (fourteenth amendment to Constitution). Corporations fall under the designation of "persons" named in this amendment (Cooley, Constitutional Law, p. 237). It is certain a very considerable class of water carriers can not be regulated by law, and this seems conceded by all who are informed on the point.

2. There seems also doubt that Congress can validly promulgate a law which touches certain classes when impossible of application to another class in the same character of business which can have the effect of giving one port of one State preference over those of another (Constitution, sec. 9). The shipping is not equally balanced as between ports, and assuming the first point to be true any injury to its shipping due to unequal distribution of the burdens would most likely result in discrimination. We can see how no such questions could arise in application to railroads, because they are all of the same class and can all be reached by the same law; but with water transportation it is different—so different the commission has found a uniform set of accounts similar to railroads is impossible, and that there are certain classes of water traffic engaged in identically the same character of business as those attempted to be covered by the act over which there is no pretense to apply is plain. It seems the nearest we can get to the constitutional exercises of such congressional power is the method adopted in the English railway act which covers "vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried," etc., or perhaps the language used in our act, though this has been suspected of unconstitutionality. Certainly it is a very doubtful step to go further and attempt to touch the local business of a water carrier for any purpose.

However, the point has, up to this time, not been seriously set up since the water lines have desired to cooperate in carrying out the beneficial remedial clauses of the act, but not to such extent as to sacrifice their constitutional rights nor to lose the benefits of the Revised Statutes herein referred to.

3. It may also well be doubted if Congress has power to delegate power to the commission, which, in the improper use of such power, may result in confiscation (fifth amendment to Constitution).

Here a naked power is intended to be delegated unregulated by any regulation aimed to effect the just exercise of such power. No provision is made to determine in instances of objection by one of the connecting carriers, the relation sought to be established in a through route, the consequences of such a union of interests carrying all the dangers of a partnership.

4. Has Congress the authority to delegate the power here intended to be conferred upon the commission without express language limiting the proper exercise of that power, or, indeed, has Congress authority to delegate its power over such a question at all?

It may be added that the President, in his recommendations submitted on or about January 10, although at that time having had the full benefit of the commission's recommendation to be given power to establish such through routes, we can find no mention of this proposed element in the amendment, and it is fairly to be assumed that so far as water interests are concerned it has been an inadvertence to offer the phraseology of the proposed amendment in such shape as to greatly imperil the marine interests of this country.

While we are not contending that no carriage by water is within the meaning of the act, we do contend that the language of the original act, of the amendment, the various congressional hearings and reports, show that there was no intent to exercise any control over transportation by water beyond that expressly stated.

It seems manifest that any regulative control over water transportation was to be ancillary only to regulation of rail carriage and to be limited therefore as closely as possible to that purpose.

A purpose to extend beyond this would be so great departure from the repeatedly declared policy of the people to conserve and foster unrestricted water carriage that nothing short of a popular demand represented by the people themselves should change it. It is possible to go entirely too far under present tendencies and to assume what the people want until they have unmistakably expressed it, especially when it tends to present a new policy interfering with their water routes.

If it be thought practicable and safe to court the dangers in giving every water line rail connections it should be accomplished by separate statute which safeguards the right, and not to undertake it, in the proposed way, a doubtful method more to the disadvantage of the public in other bearing than is their present position under existing law, for how could competition designed to eliminate the standard lines be avoided?

The CHAIRMAN. Now, Judge, we will be glad to hear anything you have to say on the subject of the amendments to the bill 16312 and the bill 17536 or any other subject.

**STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN, ACCOMPANIED BY HON. JUDSON C. CLEMENTS, MEMBER OF THE INTERSTATE COMMERCE COMMISSION.**

Mr. KNAPP. Mr. Chairman and gentlemen of the committee, the Interstate Commerce Commission has instructed me to appear here in response to your invitation and make a statement on its behalf respecting the two measures upon which you have done us the honor to invite an expression of our views, and I have persuaded my long-time associate, Commissioner Clements, to come with me, to the end that I might have the support of his presence and that you might have the benefit of his long experience and mature judgment.

I would prefer, if it is agreeable to the committee, to be permitted to make my statement complete on behalf of the commission in the first instance, and I will endeavor to make it as brief and direct as possible, and then I shall be glad to make the best answers I can to any questions that the members of the committee may desire to put.

The CHAIRMAN. Then, without objection, it will be understood that the judge will not be interrupted in his original statement.

Mr. RICHARDSON. I think that is much the best plan, to let the judge go on without interruption; a great deal the best. It will be more satisfactory.

Mr. KNAPP. Taking up the first, the so-called "Mann bill," House bill 16312, section by section:

The first section of this bill, with one or two minor amendments which I shall presently suggest, is approved by the commission in its entirety. It is regarded by us as a very careful and comprehensive statement of the substantive provisions of the present law, as contained in the first section, with some additions which we regard as very desirable, if not necessary, particularly in that this bill makes it plain that the law would extend to and the commission would have jurisdiction under it of railroads in Alaska, which we believe is not the case under the present law.

The two amendments which we suggest to the first section of this bill are these:

On page 4, at the end of line 23, add the phrase "and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

Mr. MILLER. Will you please repeat that?

Mr. KNAPP. Add at the end of line 23 the phrase, "and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful." Just as the substantive law now requiring that all rates shall be just and reasonable adds a provision that makes unlawful any unjust or unreasonable rate, so the substantive requirement in the second paragraph in this bill on page 4, that they shall make just and reasonable quotations, regulations, and practices, should, we think, contain the corresponding clause that any "unjust and unreasonable classification, regulation, and practice is prohibited" by law and declared to be unlawful.

The other amendment to that section is to strike out, at the bottom of page 5, lines 23, 24, and 25. The commission is not in favor of extending the right of railroads to grant through transportation to the classes of persons named in that phrase.

The CHAIRMAN. What page is that?

Mr. KNAPP. Page 5.

Mr. MILLER. Lines 23, 24, and 25.

Mr. KNAPP. The lines reading "and employees of companies under contract to furnish accident or other insurance to employees of the carrier traveling on business connected therewith."

The CHAIRMAN. That relates to the Denby bill.

Mr. KNAPP. We are not in favor of that bill. With the addition which I have suggested and the omission which I have just mentioned, the first section of the bill is cordially approved, and the commission has the honor to recommend its adoption.

The second section of this bill, beginning on page 8 and amending section 2 of the present law, is disapproved by the commission. The effect of that provision, as we understand it, would be to prevent any lower rate on either export or import traffic than is applied to domestic traffic, and the commission is not prepared to recommend such legislation.

Section 3, beginning near the bottom of the ninth page and amending the fourth section of the present law by striking out the phrase "similar circumstances and conditions."

Mr. WASHBURN. Whereabouts?

Mr. STAFFORD. Where does that occur?

The CHAIRMAN. He means it strikes that phrase out of the present law.

Mr. KNAPP. It is the present section of the law, omitting the phrase "similar circumstances and conditions," so that it would make a hard and fast rule.

Mr. ADAMSON. You want to restore that?

Mr. KNAPP. No; the commission would approve a measure of this sort provided that carriers be required to make their application within six months after the passage of the bill, and that the commission have such further time thereafter as may be found necessary to determine the various questions presented by those applications.

The CHAIRMAN. I do not like to interrupt you after the agreement, but do you mean by that that no application could be acted upon by the carrier, if that was the law, unless after six months from the passage of the act?

Mr. KNAPP. Within six months after the passage of the act, in which to make application to be permitted to charge more for the short haul than the long haul.

The CHAIRMAN. And if no application is made within six months thereafter, the commission would have no power?

Mr. KNAPP. We did not particularly consider that, but I suggest the substitute plan.

Mr. TOWNSEND. Do you mean by that that there would be six months' notice?

Mr. KNAPP. Yes; you might have this case, on some new line or in some section of the country where that rate of adjustment does not now exist. It might come up at any time in the future. Our idea is six months as to existing conditions of this sort, and within six months in any case they should make such application, and then the commission should take such proper time to determine the questions as they found necessary.

The fourth section of this bill, beginning on page 10 and amending section 10 of the present law, is approved in its entirety.

The fifth section of this bill, beginning on page 14 and amending section 13 of the present law, would be approved if amended in two particulars: First, by striking out in lines 18, 19, and 20, on page 15, the phrase, "and correct the rate, classification, regulation, or practice, or the failure to establish, observe, and enforce the same complained of," and by inserting on page 16, after the word "commission" in line 7, the language which now appears in this section of the bill and which gives the commission power to proceed on its own motion. Both the phrase which we ask to have stricken out, if retained and enacted, and the omission of the phrase now in the present law would operate to take from the commission jurisdiction which it now possesses, and jurisdiction which the courts have sustained.

The sixth section of this bill, beginning on page 16 and amending section 15 of the present law, is approved in its entirety.

The seventh section, beginning on page 21, line 13, is approved down to and including line 13 on page 24. The paragraph in that section beginning with line 14 on page 24 and extending to the next page, and the following paragraph, extending down to and including line 11 on page 25, are disapproved; first, because the commission



is not prepared to recommend that the misquotation of a rate shall be made a criminal offense, but believes that the enforcement of a law requiring the quotation of rates would be best accomplished as a practical matter by subjecting the carrier to the civil forfeiture of a moderate sum, to be recovered by civil action. That portion of these two paragraphs which we are now considering, beginning at the bottom of page 24, and including the second paragraph on page 25, is not understood to be disapproved, but recent decisions of the courts have settled the law precisely as it would be if that part of this paragraph were adopted. In other words, we are opposed to the first part of this paragraph, and we regard the latter part as unnecessary.

The CHAIRMAN. I assume you are right, Judge; but the courts have decided as to the second paragraph at the top of page 25, do you mean?

Mr. KNAPP. Substantially that, as we understand it.

The next paragraph, beginning with line 12 on page 25 and extending to and including line 17 on page 26, is approved.

The next paragraph, the proviso beginning with line 18 on page 26 and extending to and including line 5 on page 27, is disapproved.

Section 8, beginning with line 6 on page 27, and extending to and including line 18 on page 31, is disapproved.

As to sections 9 and 10 of this bill, extending from line 19 on page 31 to line 11 on page 34, the commission approves the general purpose of these provisions, but has been unable to make such examination of their detailed provisions as warrants it in expressing an opinion respecting the same.

The CHAIRMAN. Are you able to do this? Of course, these provisions and the provisions in the Townsend bill somewhat cover at least the same purposes. Have you been able to call attention to any particular thing in these sections which may not be covered by the Townsend bill which ought to be considered? I do not know whether there are any or not. I do not recall.

Mr. KNAPP. Perhaps I might be permitted to say in this connection generally all I have to say on behalf of the commission respecting this feature of proposed legislation. The commission has long been in favor of and has in two or three of its annual reports recommended legislation to regulate the issue of railroad securities. This bill, which bears the name of your chairman, contains provisions designed to effect that purpose. The so-called "Townsend bill" contains provisions designed to effect the same purpose. The Cummins bill in the Senate contains provisions designed to accomplish the same purpose, but the provisions are not altogether similar. We have been simply unable to make a comparison of the different plans disclosed in the three bills or to undertake to determine what should be the suitable details of a scheme of that sort.

I think I might add to that that the experience of the commission has not qualified it especially for expressing a judgment upon a subject of that kind, which is foreign to all questions which we have heretofore dealt with.

Mr. RICHARDSON. You refer, don't you, Judge, to the Interstate Commerce Commission supervising bonds and capital stock? That is what you mean by the securities?

Mr. KNAPP. Yes; it is legislation in a new field. It brings us up to questions of financing railroad corporations and protecting the public against overcapitalization and the flotation of dishonest securities.

The CHAIRMAN. If you will pardon me, I made the suggestion in reference to any comparison between this bill and the Townsend bill for this reason: I drew this provision in this bill, and what I do not know about the subject of issuing stocks and bonds would fill many libraries, and what I do know could be put in the space of a very small book. I am assuming now that when the committee takes up a particular bill for consideration it is likely to take up the administration bill or the Townsend bill, and whether by accident or design if there have been grouped in these particular features of my bill anything worthy of note, I would like to get your opinion on them.

Mr. KNAPP. I would not be vain enough to claim superiority over your chairman in any respect, but if there is any, it is in my greater ignorance of this subject. [Laughter.]

Mr. RICHARDSON. Do I understand you, Judge, to say that by reason of your preference for supervision by the Interstate Commerce Commission of the issuance of capital stock and bonds by common carriers, that necessarily antagonizes a position that I understood you to have taken in the past not unfavorable to the physical valuation of the railroads?

Mr. KNAPP. Oh, no; not for that reason. We are in favor of the physical valuation of the railroads. I might add that I think it is not yet a week since we were asked by this committee and by the Senate committee to express our views respecting these bills, and with the pressure of work which we felt could not be altogether delayed, it has been quite out of the question for us to examine, with the needful care and scrutiny, a somewhat elaborate scheme for the regulation of railroad securities. But, as I have said, while we approve of the purpose and believe that legislation in that field should be enacted, we are not yet prepared to become responsible, so to speak, for the particular features of this scheme.

Mr. RICHARDSON. Judge, excuse me. In expressing your preference for any proposed legislation before this committee, that same question arose in the Senate, did it not? You do not propose to do anything more than give your opinion about these bills, and the committee acts on its own judgment?

Mr. KNAPP. Absolutely.

Mr. RICHARDSON. It is not because you are the chief judge of the Interstate Commerce Commission and will pass upon these questions that you expect for your opinion—as expressed here to be so used or accepted by this committee—that the committee is expected to follow that, although it is your province to construe the law when it comes up to the commission from the Congress?

Mr. KNAPP. We assume that this committee and the Senate committee are entitled to any suggestions or information which the Interstate Commerce Commission can furnish.

The last section in this bill, on page 24, section 11, is approved.

The CHAIRMAN. Judge, have you examined that section carefully as to whether it is sufficient or not?

Mr. KNAPP. Not critically, Mr. Chairman. I just assumed it was.

The CHAIRMAN. I am not absolutely certain myself that it was sufficient to cover the question.

Mr. KNAPP. Taking up now the Townsend bill, so called, House bill 17536—

Mr. RICHARDSON. That is known as the "administration bill."

Mr. KNAPP. I do not characterize it in that way. We know it as the bill H. R. 17536.

Mr. RICHARDSON. That is the bill published in the papers all through the country as the "administration bill." It is known as the "administration bill." It was given to Mr. Townsend for that purpose, as appeared in the public press of this city.

Mr. MILLER. We understand that.

Mr. BARTLETT. The papers also state this morning that they had drawn a substitute.

Mr. RICHARDSON. We have it this morning. That [referring to House bill 21232] is a substitute for the "administration bill."

Mr. KNAPP. Speaking generally of this bill——

The CHAIRMAN. I suppose you will consider House bill 17536?

Mr. KNAPP. Yes.

Mr. RICHARDSON. Now, you address yourself to House bill 21232?

Mr. KNAPP. No, sir; I have not seen it.

The CHAIRMAN. All of our hearings relate to House bill 17536.

Mr. KNAPP. Speaking generally, the commission, of course, is extremely gratified that this measure embodies most, if not all, of the principal recommendations which the commission has heretofore made to the Congress, and contains other provisions of great importance, the scope and purpose of which are unanimously approved. There are, however, certain features of that bill which do not receive our assent, and to which I respectfully ask your attention.

First, as to the court of commerce. The commission does not approve the manner in which a commerce court is to be created under this bill, but believes that such a court should be composed of judges appointed thereto by the President and remaining permanently therein.

Second, assuming, as we do, that it is so intended, and to remove any doubt that may hereafter arise, we strongly recommend that the bill be so amended as to contain the explicit statement that the commerce court shall have no jurisdiction or power over the orders of the commission not now possessed by circuit courts of the United States as defined and limited by the Supreme Court in the "car distribution cases," so called, which were recently decided. Therefore we desire to have the language of the bill expressly limit the jurisdiction of the court of commerce as the Supreme Court has in effect limited the jurisdiction of the circuit courts under the present law, by holding in substance that orders of the commission involving the exercise of judgment and discretion are not open to review by the courts unless (a) the commission has acted without jurisdiction, or (b) made an order which operates to deprive the carrier of its property without due process of law.

To this end we propose the following amendment——

Mr. TOWNSEND. Please read that carefully.

Mr. KNAPP. After the word "exclusive," in line 12, page 2, insert "but nothing in this act shall be construed to give the court of commerce in such cases any jurisdiction or authority not now possessed by circuit courts of the United States or the judges thereof."

Mr. BARTLETT. Please read that again about the authority.

Mr. KNAPP. "But nothing in this act contained shall be construed to give the court of commerce in such cases any jurisdiction or authority not now possessed by circuit courts of the United States or the judges thereof."

Mr. BARTLETT. Would it hurt you to interrupt you right there? Would it interfere with you?

The CHAIRMAN. Before you came in, Judge Bartlett, we agreed that we would not interrupt him. He asked it before he commenced.

Mr. BARTLETT. Very well.

Mr. TOWNSEND. Just make a minute of it, Mr. Bartlett, and ask him about it when he gets through.

Mr. BARTLETT. I think that is the better practice.

Mr. KNAPP. In that connection, just a verbal alteration, to break the present first sentence into two, so that the whole paragraph would read in this way:

The jurisdiction of the court of commerce over cases of the foregoing classes shall be exclusive; but nothing in this act contained shall be construed to give the court of commerce in such cases any jurisdiction or authority not now possessed by circuit courts of the United States or the judges thereof. This act, however, shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

It is a mere change of construction to make the construction a little more accurate.

The CHAIRMAN. You have that written in your paper there?

Mr. KNAPP. Yes.

Third, we are of opinion that a single judge of the commerce court should not be empowered to stay an order of the commission, and therefore we recommend that the words "a judge of said court," in line 25, page 9, be stricken out and the words "said court or a majority of the judges thereof" be inserted.

Mr. TOWNSEND. Will you not state that once more? I did not quite get that.

Mr. KNAPP. Strike out the words "a judge of said court" and insert "said court or a majority of the judges thereof."

Now as to suspending rate changes, we are of opinion that the commission should have power to suspend rate changes for a longer period than sixty days, in order that there may be reasonable time for investigation, especially in view of the fact that no final order after hearing can take effect, under the present law, until at least thirty days after it is made.

We therefore recommend that the word "sixty" in line 1, page 18, be stricken out and the words "one hundred and twenty" inserted in lieu thereof.

As to through routes and joint rates, the authority of the commission to establish through routes under the present law is limited by a proviso which prevents such action when a "reasonable or satisfactory" through route already exists. This proviso is eliminated in the Townsend bill, as it should be, but a new limitation is introduced which we think should be stricken out or materially modified.

In our judgment the commission should have power to compel through routes and joint rates whenever in its opinion they are required by public necessity or convenience, notwithstanding there may be a reasonable and satisfactory route in existence and although such additional route might include less than the entire line of a road or system having an established route between the same termini. We therefore recommend that lines 24 and 25 on page 18, and the first seven lines on page 19 be stricken out and—

The CHAIRMAN. What is the wording of those lines?

Mr. KNAPP. I recommend that they be stricken out and the following be inserted in lieu thereof—

The CHAIRMAN. Give the wording of it.

Mr. KNAPP. In the Townsend bill it now reads as follows:

And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini and would form part of such through route, unless the route by way of such last-described line of railroad is unreasonably long as compared with such proposed through route.

What we propose is, in establishing any such through route, the commission shall embrace therein all of the carrier's line between the termini, or so much thereof as in its opinion may be required by public necessity or convenience.

As to routing of traffic, the right of the shipper to route traffic, as conferred by this bill, appears to be confined to a selection between routes over which joint rates have been established. If this is the meaning of the provision it would not apply in cases of through routes where the rates are locals or proportionals, particularly if the initial carrier is not a party to the tariff of connecting lines. If it is intended to give the shipper the right to choose between two or more routes, in whatever form the applicable rates are published, that intention should be plainly expressed.

We therefore recommend that the words "there are" be inserted after the word "shipment" in line 12, page 19, and that lines 13, 14, and 15, except the word "the," at the end of line 15, be stricken out. Also that the word "said," at the end of line 3, page 20, and the words "bill of lading," in line 4, be stricken out and the words "such routing instructions" inserted in lieu thereof, so that it would read:

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this act to any point of destination, between which and the point of such delivery for shipment there are two or more through routes, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to such routing instructions.

As to the purchase by one road of another road, we see no reason why the prohibition that one road shall not acquire any interest in a competing road should not be extended so as to prohibit the acquiring of any interest in a competing water line.

The CHAIRMAN. What is that?

Mr. KNAPP. We see no reason why the prohibition that one road shall not acquire any interest in a competing road should not be extended so as to prohibit the acquiring of any interest in a competing water line, and we recommend changes to accomplish that result. In line 21, page 25, strike out the word "three" and substitute "any."

Mr. MILLER. Any railroad.

Mr. KNAPP. Strike out the phrase "of any railroad corporation," in the same line, and substitute the words "or water line," and, to

correct the grammatical construction, add the word "of," after the word "stock," in the previous line.

Mr. TOWNSEND. So that it would read how?

Mr. KNAPP. So that it would read—

That no railroad corporation which is a common carrier subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, shall hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of, or purchase or lease any railroad or water line which competes with such first-named corporation respecting business to which said act to regulate commerce, as amended, applies, etc.

Mr. RICHARDSON. Are you through with your statement, Judge?

Mr. TOWNSEND. I do not think he cares to have you wait. He will rely on the record.

Mr. KNAPP. We also recommend that all of line 1 on page 29, after the word "States," and all of lines 2 and 3 be stricken out, because their retention would apparently limit or modify the prohibition in the first paragraph of section 12, page 25.

We also call attention to the fact that this prohibition is directed only against a railroad corporation subject to the act, and therefore does not prevent or effect the control of competing lines by a holding company.

The CHAIRMAN. That was one reason why I asked your judgment on the amendments.

Mr. KNAPP. As to special reports, this is a minor point. In order that there may be no doubt of the right of the commission to require special reports under laws which do not confer express authority to investigate, we recommend that the words "or which it is required to enforce" be inserted in line 10, page 25, after the word "informed."

Mr. MILLER. Repeat that, will you, Judge?

Mr. KNAPP. After the word "informed" insert, in line 10, page 25, the words, "or which it is required to enforce." The paragraph as it now stands appears to limit the right of the commission to require special reports under laws directing the commission to keep itself informed or giving it powers of investigation. We think it ought also to extend to laws where the commission has not authority, but where it still has the power to enforce them.

That, Mr. Chairman, in the briefest and most direct way in which I can state the matter, presents the views of the commission which I am instructed to submit to the committee in its behalf in relation to these two bills.

Mr. RICHARDSON. Just one question, Judge; I was asking you some questions just before you took up the "administration bill" that I would like to continue along this line. Now, what is your opinion as to the relation of capitalization of common carriers or the issuance of bonds upon freight or individual rates. Is it your opinion that the amount of capital stock or the amount of bonds issued by a common carrier offers a better criterion or standard for adjusting fair and reasonable rates than the physical valuation of a railroad?

Mr. KNAPP. Let it be distinctly understood that that is a question which the commission has not authorized me to answer in its behalf, and anything I state upon it would be merely the expression of my individual opinion, for which opinion my associates should not be held responsible. Personally I would say that under existing conditions I have not been able to trace any material relation between capitalization and rates.

Mr. RICHARDSON. Then would it not be a more direct and a more satisfactory mode of regulating the rates in a manner to make them reasonable, fair, and just, to make them depend upon the physical valuation of the roads rather than make them directly or indirectly depend on the elastic issuance of bonds and capital stock?

Mr. KNAPP. Well, I think the value of any railroad is a fact to be taken into account in determining whether its rates are reasonable or not.

Mr. RICHARDSON. But in neither one of these bills, neither in the administration bill nor in the Mann bill, can the physical valuation of the road be resorted to, but the rate is based on capital stock and bonds.

Mr. KNAPP. I would not like to say that neither of those bills provides for the general valuation of railroads. That the commission under existing law might, in a specific case, take such means as it thought best to ascertain approximately the present value of that railroad I do not doubt.

Mr. RICHARDSON. Well, Judge, do you undertake to say that so important a matter as the physical valuation of a common carrier had not been considered by the commission?

Mr. KNAPP. I do not say that. On the contrary, the commission, if you will observe and examine its last two or three annual reports, has recommended that there be an official valuation of the railroads of this country.

Mr. RICHARDSON. You would not though, as I understand you, Judge, without having consulted the commission, be willing to express here your real views, whether you prefer the physical valuation of the roads as a more correct standard for regulating rates fairly and reasonably than that of relying on bonds or capital stock? You would not like to express that preference or opinion now?

Mr. KNAPP. I doubt if anyone could be confident in his opinion as to the relative merits or value of those two facts in determining a particular case; there are so many other elements that enter into the problem. In one case the value of the railroad property might be a very material, almost a controlling, factor. In another case it might be a very insignificant factor.

Mr. RICHARDSON. Judge, just one thing further, if you please, as you said you would be willing to be questioned after you got through with your statement. I simply want information relative to what you said about through routes and joint rates applicable to water routes. Is it not a fact that in the Hepburn bill this language was used, "Provided no reasonable or satisfactory through routes exist?" That is stricken out of the present bill.

Mr. KNAPP. As we think it should be.

Mr. RICHARDSON. Yes, and you think it should be; and there has been a good deal of discussion in the commission heretofore on the question of what effect that would have. Is it not true that if that paragraph is stricken out, as it now is by each of these bills, the "administration bill" and the Mann bill, it would bear directly upon local water rates or stimulate a cheap lot of boats to inaugurate lines and drive competing interests out of business by cheap rates.

Mr. KNAPP. I do not quite follow you. Would you be good enough to illustrate?

Mr. RICHARDSON. Well, the general principle and the general idea, if I can explain it, is that the water routes are the gift of God, come

to us untrammelled and given to us free, and that they ought not to have any impositions or burdens put upon them unless they constitute a part of a through route of a common carrier. Then they ought to be properly regulated. But otherwise, by striking out this provision in the Hepburn bill that I have just read, you do subject them to interference with their local rates, as I understand it. Why do you strike that out here? Why do you want it stricken out in the Hepburn bill?

Mr. KNAPP. Briefly, the situation is this: If there is already a route established between A and B which may be regarded as a reasonable and satisfactory route, the commission has no authority to establish another one, no matter how many railroads or water lines may extend between A and B. It is powerless. Under the limitation in the Townsend bill, if a railroad or a railroad system has a line across the continent, no part of that line could be used to form another through route unless you used substantially the whole of it. Now, while we are very strongly in favor of striking out the present limitation, our suggestion is that the substitute limitation goes too far, and that the commission ought to have authority to establish routes between given points, although in doing so it does not take all of the line of an existing road between those two points, but only a part of it.

Mr. RICHARDSON. And all-water routes should be taken into consideration in connection with the regulation of competition of the railroads and common carriers—in other words, regulate generally water competition?

Mr. KNAPP. Having reference to the water lines, the present limitation operates in the same way. Here is a road running from the interior down to tide water. From there there may be two or three steamship lines to other important places. If one of them has united with that railroad in making a through rate, there is a reasonable and satisfactory through rate, and the steamship lines are excluded.

Mr. KENNEDY. The other steamship lines under these circumstances could not get a through route for their traffic?

Mr. KNAPP. They could not get in. For example, we have pending before us now a complaint by the Humboldt Steamship Company, which operates a line between Seattle and Skagway, Alaska. There is a road from Skagway which runs up over the Yukon Pass and reaches Dawson and the territory beyond. That road has a through route to Seattle with another steamship line, and the local rates of that railroad from Skagway on, which the other steamship must pay, are so near the through route from Seattle to the same point by the established route that there is nothing left for the other steamship company.

The CHAIRMAN. Judge, may I ask you a few questions on a few different points? First, on the question of the suspension of rates. As I understand the propositions in the bill, they provide in one place that a carrier shall furnish the rate to any person making inquiry, under some kind of penalty. Then it provides for the suspension of a proposed rate. Take this case: A railroad gives notice that it proposes to increase its rates or change its rates, and those rates go into effect in thirty days after they file their schedule. The night before they go into effect you enter an order suspending the rates. Of course the rate may be transcontinental. How will the



agent of the railroad company be informed next morning so that he can furnish a rate on demand without subjecting himself or his company to a penalty, he having notice that a certain rate would go into effect the next morning, but that rate does not go into effect that morning? Is there any way we can guard against that?

Mr. KNAPP. In such a case as you assume, he could not know.

The CHAIRMAN. That is what I wanted to get at. Is there any way that we can arrange the bill or law so that we will not put such a condition upon anybody?

Mr. KNAPP. My answer is that if you will make a misquotation a criminal misdemeanor, as your bill proposes to do, you would have to indict the man, and you could not indict him because he did not willfully or knowingly make the misquotation. The indictment would not lie. You could not successfully prosecute him.

The CHAIRMAN. Probably; but of course you could bring a civil suit with a penalty?

Mr. KNAPP. Of course.

The CHAIRMAN. That situation is not only liable but likely to happen constantly. Would it do to make any limitation on the time you could suspend the rate? You have not got much time anyhow. Could you suspend it the night before?

Mr. KNAPP. I do not think the two things should be complicated with each other. Does not your question arise with respect to all laws which are either penal in their character or designed to be self-enforcing?

The CHAIRMAN. I think where we give power to somebody else to say that that which is done to-day is proper, but that that which is done to-morrow morning is subject to a penalty, except where Congress itself acts—

Mr. KNAPP. Is it not equally true that the Congress may pass a law which takes effect to-day, creating a crime which did not exist yesterday, and I do not know it?

The CHAIRMAN. It is equally true, and it is also equally true that Congress may provide that it will take effect six months ahead, so that the people can take notice. That is practiced. I want to know if there is not some way that we can provide so as to avoid such a contingency, which would happen constantly under any of the provisions that we have in any of the bills?

Mr. KNAPP. My personal answer to that would be this: I would not make it a criminal offense. I would have it a civil forfeiture of a moderate amount—even less than \$250 would be sufficient, in my judgment—which would operate to insure that the agent acted with reasonable diligence in answering the inquiry. As it stands to-day, he is under no obligation to answer the question, and under no penalty if he makes a mistake.

The CHAIRMAN. I do not think you quite get the point of view I was trying to direct you to. We now provide that no rate shall go into effect without thirty days' notice, and that is the whole theory of the law, and that is the fact, so that everybody may have notice, not only the shipper but the agent. Here is a proposition to so fix it that the rate which is to go into effect to-morrow morning may not be known at 4 o'clock this afternoon. Is there no way that we can amend the provision here so that somebody may have some kind of

notice without having an order entered at 7 o'clock at night as to what the rate shall be at 7 o'clock the next morning?

Mr. KNAPP. Yes; I suppose it might be provided that any order suspending the taking effect of the proposed change of rate should be made ten days before that change should occur under the tariff filed by the carrier.

The CHAIRMAN. Suppose we were to provide hereafter that the rate should not take effect until forty days after it is filed by the commission, and then give anybody power to make a complaint and the commission to act, either upon the complaint or upon its own initiative, suspending the rate for thirty days; give the same length of time that the commission now possesses, but making at least seven days' time between the order and the taking effect of the rate, so that there may be some notice?

Mr. KNAPP. Personally I see no objection to that.

The CHAIRMAN. Would it be any injury to the railroad or shipper or anybody else to say forty days instead of thirty?

Mr. KNAPP. No, sir; personally I am one of those that attach great importance to rate stability, and I would be in favor of requiring a notice of sixty days in all cases.

The CHAIRMAN. Are you satisfied that four months' time would permit you to dispose of important cases involving a raise of rates, possibly a large number of rates? Suppose the rates were raised between Chicago and New York, as has been constantly threatened for years. Do you think you could dispose of that matter in four months' time on its merits with due regard to other matters?

Mr. KNAPP. It might happen that we could not, Mr. Chairman. But suppose we could not. In the first place, it is altogether likely that if the proceeding were pending, the investigation going on, the railroad would voluntarily postpone the taking effect of that advance, because they would rather have the question determined in advance than afterwards. In the second place, suppose they did not, and the advance went into effect, and the commission subsequently condemned it and restored the former rate, they would be obliged to pay it back.

The CHAIRMAN. Now, one other question. I have got several under different lines. On the question of competing lines a statement was made before the committee the other day by Mr. Walker, of the Rock Island road, and insisted upon quite strongly, that any two railroad lines in the United States anywhere located were in a sense competing lines. Has there been a legal definition of the term "competing lines," so that we, or you, or the court may know what that would refer to in this matter of stocks and bonds issues?

Mr. KNAPP. Not to my knowledge.

The CHAIRMAN. What would you say, then, upon that proposition as to what are competing lines? I am not asking for a judicial opinion that will bind you.

Mr. KNAPP. I might reply that neither any existing law nor any proposed law puts the determination of that question upon the commission.

The CHAIRMAN. No; I suppose it will be placed somewhere upon some court, and there is no telling about the court.

Mr. STEVENS. It is before the court now, Judge, is it not, in the Union Pacific case?

Mr. KNAPP. Everyone knows that in a certain sense there is a kind of competition between any two important railroads, although they may be located very far apart.

The CHAIRMAN. Has there been any definition of the term "parallel lines?"

Mr. KNAPP. Without being able to cite the cases, it is my impression that there are decisions.

The CHAIRMAN. Would it be intelligible to say "competing and parallel lines?" Or would that be too restrictive?

Mr. KNAPP. That would restrict the prohibition.

The CHAIRMAN. Would that restrict it beyond what the thought is now as to competing lines? Do you suppose that any of us have in mind when we use the term "competing lines" a line that is between New York and Chicago, on the one hand, and a line that is between Cincinnati and New Orleans, on the other hand?

Mr. KNAPP. Personally I think the prohibition might very properly be limited to parallel as well as so-called "competing lines."

Mr. TOWNSEND. Now, I understood you, Mr. Chairman, to state that you would eliminate from the bill the lines on page 29, which say "and the relative importance of any benefit to the public interest and of any effect upon competition resulting from such acquisition" may be taken into consideration by the courts?

Mr. KNAPP. That is the recommendation of the commission.

Mr. TOWNSEND. Yes. Now you concede, as we all do, I guess, that this question of competition is a very broad one, and lines which are not parallel may, in a proper sense, be competing; and you also believe, I take it, that the railroad should be allowed to acquire other roads for the purpose of extending its lines and better facilitating traffic throughout the country. We provide in this bill, as you know, for the court of commerce to determine in advance if the railroads desiring to acquire stock in or of another road which might be competing—for the courts to determine that question in advance, and that provision which you would eliminate was put in there for the purpose of allowing the court the power to determine whether that acquisition would be in the interest of the people, even though it might in a way be a violation of the letter of the law by acquiring an interest in a competing line. You understood that was the object, did you?

Mr. KNAPP. I assumed it was. That is to say, those three lines apparently somewhat modify and were intended to modify the general prohibition in the first part of that section.

Mr. TOWNSEND. Now, what is your objection to that? I did not quite understand it.

Mr. KNAPP. The commission recommends that those lines be stricken out, because their retention would apparently limit or modify the prohibition in the first paragraph of section 12.

Mr. TOWNSEND. And you think it ought not to be limited or modified?

Mr. KNAPP. That is the view of the commission.

Mr. TOWNSEND. If that were literally construed, then it might prevent the acquisition by a railroad of a line in extension of its existing line, might it not, if you could conceive of a case where that would be true?

Mr. KNAPP. Well, Mr. Townsend, we do not know. I am not aware of any legal definition yet of what is a competing line.

Mr. STEVENS. There is a specific illustration of what Mr. Townsend referred to: The acquisition by the "Soo" Railroad of the Wisconsin Central, from Minneapolis to Chicago.

Mr. KNAPP. You may have two lines that extend in the same direction, but they lap over for a third of the distance. There may be actual, as there certainly is potential, competition between the points where they are common, and yet that might be very insignificant as compared with their whole business.

Mr. TOWNSEND. Have you considered the proposition in the bill which we are now considering to except from the prohibition a railroad purchasing stock of another railroad which is competing—the exception which applies to electric roads?

Mr. KNAPP. I have not considered it.

Mr. TOWNSEND. What can you say as to whether steam roads are purchasing electric roads which are competing in any way?

Mr. KNAPP. We have no official knowledge on that subject, so far as I am aware, or have only such information as one gets through reading the newspapers.

Mr. TOWNSEND. Do you know whether it is true now that there are joint traffic relations between certain steam roads and electric roads?

Mr. KNAPP. Yes; I know that to be a fact. I had occasion to examine a tariff two or three days ago in which such a relation appeared.

Mr. TOWNSEND. Under the existing conditions of the law, or under existing law, the commission has power to establish a through route in such cases, has it not?

Mr. KNAPP. I think so.

Mr. TOWNSEND. Do you think it would be wise to deny the commission that right, to say that the commission shall not establish through routes between electric roads and steam roads under any circumstances?

Mr. KNAPP. I certainly should not think so, and I did not understand that there was anything in this bill that would have that effect.

Mr. TOWNSEND. I do not think so myself, because of the wording, and yet there are gentlemen who maintain that the words do convey that impression. That is one reason that I am in favor of eliminating it.

Mr. KNAPP. What page is that on?

Mr. TOWNSEND. On page 26 of the bill, at the end of that paragraph on that page, the proviso—

*And provided further, That the words "railroad corporations," as used in this section, shall not apply to or include street, suburban, or interurban electric passenger railway corporations.*

That applies to the purchase of stock in an electric line or the control of that railroad or the purchase of such a railroad. Now, it is argued that those words would simply apply to an electric passenger railroad and not to a railroad carrying freight. I have doubt about it myself. I was wondering what you thought of that principle.

Mr. KNAPP. Apparently the proviso defines what is meant by a railroad corporation as that phrase is used in that entire section, and it says it shall not be used to apply to or include street, suburban, or interurban electric passenger railway corporations.

Mr. TOWNSEND. Do you want to express an opinion on that?

Mr. KNAPP. I do not quite follow your observation to get at the point.

Mr. TOWNSEND. The exception is to the general rule prohibiting the acquisition or purchase by a steam railroad of another steam railroad. It provides that that shall not apply to the purchase of stock or the purchase of a road whose motive power is electricity.

The CHAIRMAN. Without that provision I suppose that section would apply to all railroad corporations under the control of the Interstate Commerce Commission.

Mr. TOWNSEND. This excepts electric passenger railways.

Mr. KNAPP. I do not for the moment see any reason for the exception. If it is to be the legislative policy to prevent anything which operates to restrain competition between carriers, I do not quite see upon what theory an exception is to be justified.

Mr. TOWNSEND. Let us look upon page 18, at the end of the second paragraph on that page, commencing on line 20, there. What have you to say as to the wisdom of that provision in the bill you have been considering? It says:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban passenger railways and railroads of a different character.

Mr. KNAPP. We did not give that paragraph any particular consideration. It would not occur to me as very important to make that exception.

Mr. ADAMSON. If you examined all of these bills you would have to stay in continuous session, and you would not have much time to attend to any other business.

The CHAIRMAN. You claim now the power, and exercise it—I assume you have it—to establish a through route and require a joint rate where one of the carriers is an electric line?

Mr. KNAPP. I do not think the motive power is at all important. If the railroad is engaged in interstate commerce under the first section of the act it does not matter whether its motive power is steam or electricity.

The CHAIRMAN. Under this provision, if this were a law, you would have the power?

Mr. KNAPP. Not as to passenger rates. Is that what is intended?

The CHAIRMAN. It refers to passenger railways, and that is one thing we would like to know, whether there is a definition of a passenger railway, or whether the definition is between the class of business that such a railway carries on.

Mr. RICHARDSON. I thought you had corrected that, Mr. Townsend.

Mr. KENNEDY. The word "passenger" is simply descriptive of the character of the road.

Mr. TOWNSEND. I wanted his opinion upon that, because he was discussing the bill as it was printed.

Mr. ADAMSON. Thus, if the tracks were of the same width and the couplings were arranged all right, would they not be near enough to being of the same character to admit of making them a joint route?

Mr. KNAPP. They might be. An instance came before us within a week where it appeared that an electric road moved over its line the

cars of a large railway system to the loading point and then took them back again.

Mr. WASHBURN. I would like to ask one single question before the judge leaves this point. It is through my own fault, no doubt, that I have not yet satisfied myself as to Judge Knapp's attitude toward this paragraph beginning on line 20, page 18, with the words "The commission" and ending with the words "different character." It is the same paragraph that Mr. Townsend asked the question about. What I would like to inquire is if this paragraph takes away from the commission or attempts to take away from it any jurisdiction which the commission now claims the right to exercise?

Mr. KNAPP. I would be inclined to answer your question in the affirmative.

Mr. WASHBURN. That it does take it away?

Mr. KNAPP. Yes; where it has ever been called upon to establish a through route or joint rate applicable to passenger business between a steam railroad and an electric railroad, I do not for a moment see why its present jurisdiction would not authorize it to do so if it was satisfied in a given case that it ought to be done.

Mr. WASHBURN. Then you would be in favor of having those lines stricken out, would you not?

Mr. KNAPP. I think so.

Mr. WASHBURN. And you do not think that this inhibition is confined to passenger business, do you, in this paragraph that we are talking about?

Mr. KNAPP. It appears to be designed to be confined to that.

Mr. WASHBURN. You do think it is confined to the passenger business?

Mr. KNAPP. It seems to be the plain intention of it.

The CHAIRMAN. Well, Judge, on that point, regardless of what the language in this bill is, what would be your opinion as to restricting the power of the commission to make joint rates and through routes as to freight business when one of the connecting lines is an electric road?

Mr. KENNEDY. And carrying passengers.

Mr. KNAPP. It is not easy to say, because ordinarily the reason for establishing through routes and joint rates is that there is a physical connection between roads of the same character, so that their equipment and motive power can move from one to the other and so that freight can move without breaking bulk. That would not be true as to passengers between the electric road and the steam road. The cars ordinarily operated for an electric road would not operate for the steam road, and vice versa.

The CHAIRMAN. The cars might run; the engines probably would not. That is the statement that was made to us, that the electric companies have standard freight cars.

Mr. KNAPP. Well, the rates, if they were interstate, would be subject to the control of the commission under the existing laws.

The CHAIRMAN. Is there any differentiation in your mind between the desirability of having the Government regulate and control electric roads from the right to control the steam roads?

Mr. KNAPP. Theoretically not.

The CHAIRMAN. Practically?

Mr. KNAPP. We naturally think about questions of this kind with relation to the existing conditions, and this is what we see: The quite recent but rapid development of electric transportation by the trolley system, and roughly you have got three classes of roads, the urban, the suburban, and the interurban. But when you come to determine whether a particular road is urban or suburban or interurban, or whether it is engaged in interstate commerce, whether it ought to be required to unite with steam roads in forming through routes and joint rates or not, it would merely depend upon a variety of facts and circumstances in the particular case considered.

The CHAIRMAN. Now, having given us an opinion on the subject of electric roads, what do you say as to water carriers?

Mr. WASHBURN. May I, on the point of electric roads, before you go on to water carriers, now call Judge Knapp's attention to the reprint of the Townsend bill?

The CHAIRMAN. Certainly; go on.

Mr. WASHBURN. As to pages 21 and 22, and the language on top of page 20, touching electric roads, I would ask him to read that section, and then state if he has any comment to make upon that.

Mr. KNAPP (reads):

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character.

Let me again remind you that these are questions which the commission has not at all considered, and that anything that I might say must simply be regarded as my personal impression at the moment, and in no sense a statement for which my associates are responsible.

Upon the moment, Mr. Washburn, I do not think the exception there important. In other words, the instances where it ought to be done, if any, are so few that the limitation would not be a matter of great practical importance.

Mr. SIMS. Might it not become important with the extension of such facilities?

Mr. KNAPP. Yes; it might.

Mr. KENNEDY. If the limitation were stricken out entirely, it is left, then, for the commission to establish through routes where they think the interests require?

Mr. KNAPP. Yes.

The CHAIRMAN. May it not become of very great importance?

Mr. KNAPP. Yes; that suggests that I might add to my answer that the danger that the commission will exercise that power where the power ought not to be exercised is so slight that there is no practical danger to any interest in taking out this exception.

The CHAIRMAN. Take this case, where I think you are familiar enough with the situation: There are a great many electric roads in Indiana. I think some of them, of the interurban lines, possibly, get up to Hammond, Ind.—I do not know the fact—right across the line from Chicago. Of course all of those lines are extremely anxious to get facilities to go down town in the city of Chicago. Assuming that there were electric lines that terminated at Hammond, and that you are given the power to make through routes and joint rates, might it not be quite possible that you would be asked, and perhaps by the

force of circumstances required, to make a through route, giving the electric lines in Indiana the haul up to Hammond and requiring the steam railroads to run from Hammond down town to Chicago, to carry passengers on a joint rate?

Mr. KNAPP. That would follow.

The CHAIRMAN. And is not that a matter that is liable to arise in nearly all of the large cities of the country, and is it not of very great importance, both to the steam roads, who would lose the long haul, and to the electric roads, that may thereby gain the use of terminals without expense?

Mr. KNAPP. Mr. Chairman, I think you fully appreciate the objection to giving power to the commission in any case to allow one road to short haul the business of another road, and yet there still may be cases where, in the public interest, to meet the public necessity or convenience, that ought to be done, and the road whose traffic is short hauled can be fairly, if not fully, protected in the division of the rate. I can quite conceive of cases where, if that were done, the objecting road could be given out of the through rate more than perhaps its local.

The CHAIRMAN. That may be true, especially as to freight. But is it practically true as to passenger rates, where in nearly every State the amount that may be charged is fixed, and you are more or less controlled by that? I am not pressing for any opinion as to the merits of the proposition. I can conceive that a good deal can be said on both sides. I understood you to say you did not regard it as important. In the first place, it seems to me you ought to revise that opinion. I think it is very important.

Mr. KNAPP. I did not say it was not important. I appreciate its great importance. I said the practical danger of wrongdoing, either with the exception taken out, or of wrong action if it is retained, is so slight that from that point of view I did not regard it as important. The thing itself is very important.

Mr. TOWNSEND. Under existing law you have the right to make this through route now if no satisfactory route exists between electric roads.

Mr. KNAPP. Yes.

The CHAIRMAN. A satisfactory route always does exist between these two points where the electric and steam roads run?

Mr. KENNEDY. We thought a little about injecting the word "parallel" here as the limitation. If you follow the mathematical definition of the word "parallel," that would not be a limitation at all.

Mr. KNAPP. The courts would say "substantially parallel," running in the same general direction.

Mr. KENNEDY. Should we not qualify the word if we mean somewhere near? The word "parallel" means equidistant all the way, and there would not be two roads in the entire country that would be parallel in that sense.

The CHAIRMAN. That is meant only in the ordinary acceptance of the term.

Now, as to other lines, on page 18 there is a provision—

And this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.



There has been strenuous objection by the water carriers against that provision. What have you to say on that point, especially as to the right to require joint routes where water lines are one of the connecting carriers?

Mr. KNAPP. It is in the present law. I think it should remain in there.

The CHAIRMAN. If it is in the present law, what is the necessity of putting it in here?

Mr. KNAPP. I suppose it was intended to rewrite the existing section and leave out the present exception and then in the subsequent paragraph introduce the two limitations.

The CHAIRMAN. The only place where water lines are mentioned in the existing law, as I recall it, is in section 1, where you make the description of the common carriers. See if I can refresh your recollection on that. The existing law provides for control over water lines where the water lines and the railroad lines are under joint control, and you exercise jurisdiction over the water line where it now voluntarily makes a joint rate with the railroad company. But I think you have no jurisdiction over an independent water line that makes no joint rate. This would permit you to require an independent water line which has now no joint route or through route to enter into a through route and joint rate?

Mr. KNAPP. If you will turn to the fifteenth section of the present law, which I suppose this paragraph was somewhat intended to change, at the bottom of page 19, you will find this provision:

The commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

Now, that is just left in the law in substantially the same words, I suppose.

Mr. RICHARDSON. Do you mean to say that this bill is the same as the Hepburn Act?

Mr. KNAPP. It is just the same, except that it leaves out—

Mr. RICHARDSON. Why, then, did it strike out the words "where no reasonable or satisfactory through route exists?"

Mr. KNAPP. As I said, that is eliminated from the present law, as it should be, but in place of it is imposed another limitation in the next paragraph.

Mr. RICHARDSON. With what effect, do you think, relative to the paragraph stricken out?

Mr. KNAPP. No; a very different one.

Mr. STEVENS. You understand, Judge, that representatives of the water carriers have been here objecting to the striking out of that language from the existing law. They would like to have the law retained as it is, and you understand the basis of their contention?

Mr. KNAPP. That can not be true of all of them, because within a week the manager of a very large water line came to see me personally on this point. It is another instance such as I gave an illustration of a little while ago. Here, on a well-known river, are two well-

known steamboat lines, large freight carriers operating—and the railroad comes to the head of that stream.

Mr. ADAMSON. Where a satisfactory route already exists?

Mr. KNAPP. It has got through arrangements with one, and wants to make them with another.

Mr. ADAMSON. You do not advocate the exercising of power to force another? You do not advocate such a change?

Mr. KNAPP. Let me mention that it so happens that in every instance where the commission has been asked to exercise its power the complainant has been a water line, and in no instance yet the defendant.

Mr. STEVENS. I am glad to know that. Now, their contention was to this committee that along the Atlantic coast, for example—and I think a very large proportion of the independent water carriers appeared before us and urged this contention—a satisfactory through route existed, and that satisfactory rates existed between the independent water lines and the railroads, and that so long as that condition existed they could make a decent living, and that the public were satisfied, and that the railroads were satisfied, and that they could maintain their equipment and service to the satisfaction of the public; but that if you strike out these words and leave the matter open it is an invitation for either one or both of two things to be done; first, that a cheap and inefficient competing service should be established, which would necessitate the deteriorating or impairing the quality of their service in order to compete on even terms, and that that would be unsatisfactory and dangerous to the public; or, second, that the railroads themselves could and would establish a competing service, and in that way prevent their maintaining their satisfactory service that now exists, and eventually running them off from the route. What have you to say as to those two contentions of those water carriers?

Mr. KNAPP. So far as that latter part of the contention is concerned, what is to prevent the railroads now from putting on their competing water line?

Mr. STEVENS. They could not force a through route.

Mr. KNAPP. Let them put on their own boats and make them independent of the water lines.

Mr. STEVENS. They did not seem to think that was a pressing situation at all. We interrogated them upon that.

Now, as to the other proposition, about the impaired service, what have you to say as to that?

The CHAIRMAN. Excuse me a moment. The question will be whether the committee will go ahead this afternoon or to-morrow. Judge Knapp, would it be inconvenient for you to appear to-morrow morning?

Mr. KNAPP. So far as I am personally concerned, I would prefer to come to-morrow rather than to return this afternoon.

The CHAIRMAN. We can probably give you the day, to-morrow, if necessary, although I do not know how long the committee will want to continue.

This question of Mr. Stevens you can answer to-morrow.

Without objection, then, the committee will stand adjourned until to-morrow morning.

Mr. KNAPP. The typewritten memorandum that I brought with reference to the Townsend bill I am perfectly willing to leave with the committee.

The CHAIRMAN. Give it to the stenographer, and it will be incorporated in the hearing.

[Thereupon, at 11.45 o'clock a. m., the committee adjourned until to-morrow morning at 10 o'clock.]

Following is the memorandum submitted by Mr. Knapp:

Memorandum relating to House bill 17356, submitted to the House Committee on Interstate and Foreign Commerce February 18, 1910, on behalf of the Interstate Commerce Commission.

It is extremely gratifying to the commission that this measure embodies most, if not all, of the principal recommendations heretofore made to the Congress, except the valuation of railroad properties, and also contains provisions of great importance, which, in their general scope and purpose, are unanimously indorsed. There are, however, some features of the bill which do not receive our assent and to which we respectfully call your attention.

#### THE COURT OF COMMERCE.

1. The commission does not approve the manner in which a commerce court is to be created under this bill, but believes that such a court should be composed of judges appointed thereto by the President and remaining permanently therein.

2. Assuming, as we do, that it is so intended, and to remove any doubt that may hereafter arise, we strongly recommend that the bill be so amended as to contain the explicit statement that the commerce court shall have no jurisdiction or power over orders of the commission not now possessed by circuit courts of the United States as defined and limited by the Supreme Court in the "car distribution" cases, so called, which were recently decided. Therefore we desire to have the language of the bill expressly limit the jurisdiction of the court of commerce as the Supreme Court has in effect limited the jurisdiction of circuit courts under the present law, by holding in substance that orders of the commission involving the exercise of judgment and discretion are not open to review by the courts unless (a) the commission has acted without jurisdiction or (b) made an order which operates to deprive the carrier of its property without due process of law.

To this end we propose the following amendment: After the word "exclusive," in line 12, page 2, insert "but nothing in this act contained shall be construed to give the court of commerce in such cases any jurisdiction or authority not now possessed by circuit courts of the United States or the judges thereof." Strike out the words "but this act," in said line 12, and insert "this act, however."

3. We are of the opinion that a single judge of the commerce court should not be empowered to stay an order of the commission, and therefore recommend that the words "a judge of said court," in line 25, page 9, be stricken out and the words "said court, or a majority of the judges thereof," inserted.

#### SUSPENDING RATE CHANGES.

We are of opinion that the commission should have power to suspend rate changes for a longer period than sixty days, in order that there may be reasonable time for investigation, especially in view of the fact that no final order after hearing can take effect, under the present law, until at least thirty days after it is made.

We therefore recommend that the word "sixty," in line 1, page 18, be stricken out and the words "one hundred and twenty" inserted in lieu thereof.

#### THROUGH ROUTES AND JOINT RATES.

The authority of the commission to establish through routes under the present law is limited by a proviso which prevents such action when a "reasonable or satisfactory" through route already exists. This proviso is eliminated in the Townsend bill, as it should be, but a new limitation is introduced which we think should be stricken out or materially modified. In our judgment the commission should have power to compel through routes and joint rates whenever in its opinion they are required by public necessity or convenience, notwithstanding there may be a reasonable and satisfactory route in existence and although such additional route might include less than the

entire line of a road or system having an established route between the same termini. We therefore recommend that lines 24 and 25 on page 18, and the first 7 lines on page 19, be stricken out and the following inserted in lieu thereof: "And in establishing any such through route the commission shall embrace therein all of a carrier's line between the termini or so much thereof as in its opinion may be required by public necessity or convenience."

#### ROUTING OF TRAFFIC.

The right of the shipper to route traffic, as conferred by this bill, appears to be confined to a selection between routes over which joint rates have been established. If this is the meaning of the provision it would not apply in cases of through routes where the rates are locals or proportionals, particularly if the initial carrier is not a party to the tariff of connecting lines. If it is intended to give the shipper the right to choose between two or more routes, in whatever form the applicable rates are published, that intention should be plainly expressed.

We therefore recommend that the words "there are" be inserted after the word "shipment," in line 12, page 19, and that lines 13, 14, 15, except the word "the" at the end of line 15, be stricken out. Also that the word "said," at the end of line 3, page 20, and the words "bill of lading," in line 4, be stricken out and the words "such routing instructions" inserted in lieu thereof.

#### PURCHASE BY ONE ROAD OF ANOTHER ROAD.

We see no reason why the prohibition that one road shall not acquire any interest in a competing road should not be extended so as to prohibit the acquiring of any interest in a competing water line. We therefore recommend that the word "the," in line 21, page 25, be stricken out and the word "any" inserted in lieu thereof, and that the words "of any railroad corporation," in the same line, be stricken out and the words "or water line" inserted in lieu thereof; and that the word "of" be inserted after the word "stock," in line 20 of the same page.

We also recommend that all of line 1, page 29, after the word "States," and all of lines 2 and 3 be stricken out, because their retention would apparently limit or modify the prohibition in the first paragraph of section 12, page 25.

We also call attention to the fact that this prohibition is directed only against a railroad corporation subject to the act, and therefore does not prevent or effect the control of competing lines by a holding company.

#### SPECIAL REPORTS.

In order that there may be no doubt of the right of the commission to require special reports under laws which do not confer express authority to investigate, we recommend that the words "or which it is required to enforce" be inserted, in line 10, page 25, after the word "informed."











# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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PART XXI

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

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FREDERICK C. STEVENS, MINNESOTA.

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THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.

## BILLS AFFECTING INTERSTATE COMMERCE.

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### COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, *Saturday, February 19, 1910.*

The committee this day met at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. There may be inserted in the record letters from Mr. William A. Glasgow, jr., of Philadelphia, concerning appeals to the court by the shipper from the orders of the Interstate Commerce Commission.

(Following is the letter referred to:)

PHILADELPHIA, *February 17, 1910.*

MR. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

MY DEAR SIR: I have your letter of February 14. My view is that when a shipper files a complaint with the Interstate Commerce Commission, and the facts are found by the commission in accordance with the allegations of the complaint, and then the commission declines to grant the relief, that the shipper should have the right to present the case to the court for a review of the order of the commission. I do not intend by this to claim that the shipper should have the right to have the court review the findings of the commission as to the facts; but, where the relief is denied on the commission's conclusion as to the law, or where the commission arbitrarily exercises a discretion which leaves the shipper without relief, I think that the courts should have jurisdiction to pass upon the complainant's case. For illustration: Suppose a complaint is filed by a shipper and the commission finds the facts exactly as alleged, but holds that under the law it can grant the shipper no relief. My view is that the findings of fact by the commission should be conclusive, but that the shipper should have the right to have the conclusions of the commission as to the law reviewed by the courts, and I think the same rule should apply where the commission has the discretion as to granting relief, if it should appear that the commission had arbitrarily exercised this discretion in a manner not justified by the facts found by it.

This is briefly my view. I could go more into detail and I think could justify the position I indicate above.

I consider this a most important matter unless the commission is to be the final tribunal, so far as complaints filed by the shippers are concerned, both as to the law and the fact; and this is not true so far as a carrier is concerned, but it may have the courts pass upon its rights.

I shall be glad to answer any further inquiries you may make, or discuss the matter personally with you, if you so desire.

Very truly,

WM. A. GLASGOW, JR.

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PHILADELPHIA, *February 19, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

MY DEAR SIR: Referring further to your letter of a few days ago as to an appeal on behalf of the shipper from a decision of the Interstate Commerce Commission, my suggestion on this line is in accordance with the practice, as I understand it, under the English railway and canal traffic acts.

An appeal may be taken by a shipper from the decision of the railway and canal commissioners under the English act, whenever the railway commissioners in solving

a question of fact have applied a wrong principle of law, and I think this procedure is essential to the proper protection of the rights of the shipper. Not that I have any want of regard for the decisions of the Interstate Commerce Commission, but, in my judgment, the shipper should be on the same basis as the carrier in the protection of his rights under the laws of the land.

I go a little further than this, and in my view the shipper should have the right of appeal from an order of the commission declining to grant relief, but the facts found by the commission should not be reviewed by the court, but jurisdiction should exist in the court to review the conclusion of the commission upon the facts found.

I trust you will pardon my troubling you so frequently about this matter, but I consider it of very great importance, and I hope very much that some provision may be put into the act along the lines I suggest.

Believe me, very truly,

WM. A. GLASGOW, Jr.

Also a letter from Griggs, Baldwin & Baldwin, of 27 Pine street, New York, in reference to the matter of sample cases and baggage. (Following is the letter referred to:)

NEW YORK, February 16, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: Supplementing the oral presentation of our contention in favor of the passage of bill H. R. 1491, on which a hearing was had before your committee on February 14, 1910, we deemed it desirable to ask your consideration of this communication as part of our contention rather than to attempt to take up more of the time of your committee with a continuance of the oral argument. This favor we trust you may be able to accord us, especially in view of the fact that after the various railroad companies represented had concluded their testimony before the committee, your members were obliged to return to the floor of the House.

The agitation to secure legislation legalizing the carriage of commercial samples as baggage, as far as the association represented by us is concerned, began in July, 1906, when a committee, known as "the excess-baggage committee," was appointed by the president of the National Wholesale Dry Goods Association. It consisted of W. H. Sigler, of Root & McBride Company, of Cleveland, Ohio; Howard Durham, of Marshall Field & Co., of Chicago, Ill.; and Robert Geddes, of Havens & Geddes Company, of Indianapolis, Ind. The immediate necessity for the appointment of the committee were the continuous complaints that overcharges were being exacted by the various railroads of the country for the transportation of baggage in excess of the weight of 150 pounds and the existence of inequitable legal conditions governing commercial baggage.

In January, 1907, at the annual meeting of the National Wholesale Dry Goods Association, the excess baggage committee submitted its report. This report dealt mainly with the rates charged for excess baggage by the railroad companies, and the information contained in the report, as well as the references given by Mr. W. H. Sigler, a member of that committee, resulted in the appointment of a new committee of five members with direction to secure, as far as possible, the correction of existing overcharges in baggage tariffs and of the unsatisfactory legal status of commercial samples as baggage.

The committee appointed at that time consisted of Robert Geddes, chairman; Howard Durham; F. S. Munger, of Edson-Moore Company, of Detroit, Mich.; W. H. Sigler; A. C. Farley, of Farley, Harvey & Co., of Boston, Mass.; and Frank T. Day, of Havens & Geddes Company, of Indianapolis, Ind. At the end of the year 1907 this committee reported that, aside from the State of Indiana, where the rates on excess baggage had been materially reduced by law and commercial baggage given a sound legal standing, the average cost of the transportation of excess baggage had been increased by the railroad companies to the extent of 20 to 25 per cent over preexisting rates.

As a result of this report the bill now before your body as H. R. 1491 was drafted and has been introduced under various bill numbers in the last two Congresses. The first opportunity for the consideration of its provisions was afforded at the hearing on February 14.

In addition to the National Wholesale Dry Goods Association, the bill has the support of the following organizations:

National Shoe Wholesalers' Association.  
New England Shoe Wholesalers' Association.  
New England Shoe and Leather Association.

Middle States Shoe Wholesalers' Association.  
 Southern Shoe Wholesalers' Association.  
 Western Association of Shoe Wholesalers.  
 National Hardware Association of the United States.  
 Wholesale Saddlery Association of the United States.  
 The Trades League of Philadelphia.  
 The United Commercial Travelers of America.  
 The Travelers' Protective Association.

Of the foregoing associations, the members of the National Wholesale Dry Goods Association alone pay annually excess-baggage charges aggregating over \$1,500,000. Mr. Campbell, who represented before your committee the National Shoe Wholesalers' Association, stated that 20 per cent of the total expenses of commercial travelers in the employ of shoe houses consists of excess-baggage charges, 30 per cent being railroad fares and 50 per cent hotel bills, etc. From a practical standpoint, therefore, the proper settlement of the law on the subject of sample baggage is eminently desirable.

Moreover, the acceptance on the part of the railroad companies of the commercial traveler's baggage has created a condition of such far-reaching consequences that legal recognition should be made of the carriage by the railroads of salesmen's samples as baggage and the practice given legal stability.

A vast amount of the wholesale business of the country is transacted through commercial travelers. The requirements of their occupation render necessary that the samples and catalogues which they exhibit to their customers for the purpose of securing orders should be carried with them. In order to secure the transportation of the sample trunks along with the salesman, resort has been heretofore had either to artifice or the salesman has been dependent upon the favor of the railroad company or its employees. This condition is the result of the legal determination that the term "baggage" for which passenger carriers are responsible does not include articles of merchandise not intended for personal use. This definition will be found applied in the case which was cited at the hearing before the committee, *Humphreys v. Perry* (148 U. S., 627), where you will find a reference to many of the decided cases on the same point, at pages 642 et seq., of the opinion of the court written by Mr. Justice Blatchford.

The extent to which the definition of baggage is applied may be seen from the case of *Alling v. Boston and Albany Railroad Co.* (126 Mass., 121), cited in the opinion of Mr. Justice Blatchford, at page 642, where it was held that if a passenger delivered to a railroad company a trunk containing samples of merchandise belonging to a third person, whose agent he was, to be transported to a place to which the agent had a ticket, the only contract entered into was for the transportation of the personal baggage of the agent, and the company was not liable in contract to the owner of the trunk for its loss, nor in tort, except for gross negligence; and that evidence that a large part of the company's business consisted in the transportation of passengers with trunks like the one lost containing merchandise; that such trunks were known as sample trunks, and were of special construction; and that such travelers purchased tickets for the ordinary passenger trains and received checks for their trunks and were transported for the price of the tickets, was immaterial.

The consequences of the present condition of the law of which we most particularly complain are these:

1. Whenever sample trunks checked as baggage are lost the railroad company may defend against a recovery on the ground that it is not responsible for anything except personal baggage.
2. The railroad company may at any time refuse to receive sample trunks as baggage and require that they and their contents be sent by freight.
3. The commercial traveler and his employer have no legal standing before the Interstate Commerce Commission to complain of improper charges for excess baggage when such baggage consists of articles that in the present condition of the law are not legally baggage.

The first of these results is evident from the adjudicated cases to which we have already made reference.

The second condition of which we complain is not denied by the railroad companies. Every one of the witnesses called by the railroad companies when interrogated by members of your body stated that the carriage by the railroads of samples as baggage was entirely voluntary, and that, although they accepted for carriage all sample trunks that were offered, yet they desired to retain their right to refuse at any time to carry such trunks in that fashion and to contest in the event of loss the right of the salesman or his employer to recover for the samples damaged or destroyed.

The third result to which we have referred is remediable only by legislation of the character we are advocating. The Interstate Commerce Commission certainly, in

our judgment, can not impose upon railroad companies other duties than those which are legally incidental to the conduct of their business, and until the common law as enunciated by the courts up to the present time has been changed by legislation of the character under discussion the definition of "baggage" as "personal effects" will deny a standing to commercial travelers and their employers before the Interstate Commerce Commission.

There is abundant cause for complaint in connection with excess-baggage charges. The present scale for excess-baggage rates was devised some twenty or more years ago. The representative of the Pennsylvania Railroad told your committee that rates are "not higher" for excess baggage than they were twenty years ago. He might have truthfully stated that they are not lower than they were at that time. As a concrete example, he stated that the rate from Washington to New York had remained at \$0.95 for twenty years. While, therefore, there has been found marked advancement in the line of improved facilities, increased capacity, enormously developed volume of traffic, and vastly enlarged express business, all having a tendency to reduce the average cost of hauling baggage, the charge for excess baggage remains practically at the old figures. We believe that there has been no change because the only parties really interested in the reduction of rates on excess baggage are the traveling salesman and his employer, who, as we have heretofore stated, are without any legal standing to apply for a reduction of such rates. As a result, although you may occupy a Pullman seat from Washington to New York for \$1.25, it will cost you at the rate of \$0.95 per 100 pounds—\$1.42½ for 150 pounds—of excess baggage that is placed in the baggage car.

No complaint was made by the railroads present at the hearing respecting their profits on the carriage of excess baggage. It was learned by the representatives of some of the companies that we were advocating a measure containing a provision fixing the rate at which such baggage should be carried, but the bill before the committee makes no mention of rates and does not call upon Congress to exercise the rate-making power. As far as the question of improper rates for excess baggage is concerned, the proposed law merely enables the commercial traveler and his employer to go before the Interstate Commerce Commission and, fortified in the legal position, make a complaint respecting exorbitant or discriminatory baggage rates of which the commission may take cognizance.

The objections of the opponents of the proposed bill were based upon hypotheses of the most extreme character.

In the first place, it was feared by all of the railroad baggage men that the employers of commercial travelers would, upon the passage of the law, make delivery of articles sold by them, as excess baggage at enormously higher rates for its transportation, instead of by express at lower rates and with better handling or by freight at ordinary freight rates. The mere statement of such a proposition is its own refutation.

In the second place, it was feared that commercial travelers would begin to expand the amount of samples carried by them to such an extent that they would fill up the baggage cars to the exclusion of tourists' trunks containing personal effects. Such a supposition is ridiculous. The employer of the traveling salesman does not relish the payment of excess-baggage rates, and the application of principles of ordinary common sense is sufficient to answer the statement that the traveling salesman will go about with more baggage than he actually requires, and that his employer will burden himself with the expenses of paying excess baggage on samples to encumber the railroads. It may as well be supposed that every one leaving the city of New York for Chicago to-morrow will insist upon riding on the Twentieth Century Limited, as an argument against the continuance of the service afforded by that train.

The representative of the Southern Railway Company presented a third objection to the enactment of this proposed law, in the shape of a claim that it was class legislation. This argument is met by the fact that every one of the railroad companies' representatives that were present stated that they had a voluntary schedule in force relating to the carriage of samples of commercial travelers as a particular class of baggage. Certainly a classification that is not only fully recognized by the railroad company, but made the basis of rules relative to the carriage of baggage, is not discriminatory if adopted by the legislature, which in that case would only enact into law the practice of the railroad companies. Moreover, the courts have latterly come to a recognition of the practice that railroad companies have made of accepting sample trunks as baggage, and the court of appeals of the State of New York, in a case cited to the committee upon the hearing in this connection, said:

"The law relating to this subject has been in a state of evolution, and certain rules have finally been laid down in this State calculated to protect the rights of both parties, in view of the fact that a vast amount of the wholesale business of the country is transacted through commercial travelers to the great profit of the railroad company

and convenience of merchants." (*Trimble v. N. Y. C. and H. R. R. Co.*, 162 N. Y., 84, at p. 87.)

The proposed law does not compel the railroad company to discriminate against the farmer and the artisan. The tools and effects of anyone else may be carried by the railroad company under any such regulations as it sees fit to adopt. The bill for whose passage we are contending does not prohibit the railroad company from carrying anything they please in any fashion they may determine for any other class of persons, nor does it compel the railroad companies to discriminate against such other classes. Its effect, as we have continuously insisted, is merely to give to commercial baggage a legal standing such as it has at the present time in England and such as it should have in view of the practice of the railroads of this country.

The attitude of the railroad companies toward this proposed legislation is entirely anomalous. They admitted before your committee that they were carrying 150 pounds of merchandise, not personal effects, for every commercial traveler free of charge. They are therefore discriminating against every other shipper of freight by transporting 150 pounds for the commercial traveler gratis. In doing so they are of course giving due recognition to a requirement of the commerce of the country. The nature of the requirement is not changed when the same recognition is made by the legislature.

As to the form of the proposed bill, it does not differ except in connection with the rate-making provision from statutes already in force in the States of Indiana and Missouri. An unreasonable application of its provisions, if enacted into law, could not, of course, be expected. The railroad companies, by the proposed act, are only required to carry baggage on trains equipped with a baggage car. If the baggage accommodations on that particular train are insufficient or the traveling salesman does not present himself in time to have his baggage checked, the law would not be violated by sending the baggage on the train following, as the representative of the New York Central stated is done at the present time.

Section 2 defines sample baggage and requires railroads to transport only what the commercial traveler uses for the transaction of his business and carries with him solely for that purpose.

The third section imposes a penalty, to which the railroad companies made no objection.

The fourth section was designed to reach those cases where the freight rate is in excess of the excess-baggage rate. In such instances the extent of the recovery is determined by the proportion that the excess-baggage rate bears to the freight rate. In other words, to furnish a concrete instance, if the excess-baggage rate between two points were \$0.40 per 100 pounds and the freight rate \$0.50, the traveler whose excess baggage is destroyed or damaged would only be entitled to recover four-fifths of the value of the goods lost or injured.

We respectfully submit that there is need for such legislation as we have advocated, and that the legislation itself is merely by way of recognition of existing railroad regulations, and we therefore respectfully urge the passage of the proposed law under consideration.

Respectfully submitted.

GRIGGS, BALDWIN & BALDWIN,  
*Attorneys for the National Wholesale Dry Goods Association.*

Also a letter addressed to Mr. Stevens from J. B. Baird, general freight agent of the Northern Pacific Railway Company, relating to tariff schedules and ratings.

(Following is the letter referred to:)

NORTHERN PACIFIC RAILWAY COMPANY,  
*St. Paul, Minn., February 10, 1910.*

Hon. F. C. STEVENS,  
*Member of Congress, Washington, D. C.*

DEAR SIR: The recent issue of the *Traffic World* contains a report of an address made by Mr. J. C. Lincoln, president of the National Industrial Traffic League, before the House Committee on Interstate and Foreign Commerce, of which I understand you are a member, with respect to proposed amendments to the interstate-commerce law. In this address, among other things, Mr. Lincoln advocated an amendment to the law giving the shipper the right to route his freight between shipping point and destination.

During the early part of December Mr. Lincoln delivered an address before the National Association of Railway Commissioners along the same lines, apparently, as his address before the congressional committee. In that address he criticised a rule in the

tariffs of the transcontinental lines which contained this objectionable provision. I wrote Mr. Lincoln explaining why the transcontinental lines considered it necessary to provide a rule of this kind, and, for your information, I inclose you herewith copy of my letter to him, to which, up to this time, I have not even received an acknowledgment.

I have thought that possibly some of the statements contained in my letter to Mr. Lincoln might be of interest to you in dealing with this subject, and as indicating reasons why it is not practicable to literally comply with this demand.

In his address before the committee Mr. Lincoln proposes that the law be amended so as to permit shippers, in delivering property to common carriers for transportation, to avail themselves of the right to designate and direct over what connecting lines forming a part of the through route said property shall be transported. The question is, How are the shippers to know what the connecting lines are forming a part of the joint through route in such cases as we have cited to him in our letter? I might state that the tariff containing this provision which Mr. Lincoln criticised applies, with few exceptions, from all of the points in the States east of a line drawn from Duluth through St. Paul, Sioux City, Missouri River crossings to Kansas City, thence to the Gulf of Mexico to points on the Pacific coast.

It would be manifestly impossible to enumerate all through routes in a tariff applying between points in these various eastern States and points on the Pacific coast, and if such through routes were not designated in the tariff, under a rule of the Interstate Commerce Commission, without such provision as that now contained in the tariff, the shipper would have the right to suppose that the rates applied over any route which he might select if it included only lines which were parties to the tariff.

The shipments erroneously routed, and referred to in our letter to Mr. Lincoln, were forwarded over lines that were parties to the tariff, but over which there was no traffic arrangements among the carriers for the protection of the through rate, and, as explained to Mr. Lincoln, this provision in the tariff was inserted as much for the protection of the shippers as it was for the protection of the carriers.

Hoping that this may be of some service to you in considering the matter, I remain,

Yours, truly,

J. B. BAIRD,  
General Freight Agent.

DECEMBER 8, 1909.

J. C. LINCOLN, Esq.,

*President National Industrial Traffic League, St. Louis, Mo.*

DEAR SIR: I have read with considerable interest your address before the National Association of Railway Commissioners, particularly that portion about giving the shippers the right to route freight, and in which you quote provision now contained in the tariffs of the transcontinental lines from the Atlantic coast points to points on the Pacific coast, reading as follows:

"The rates named herein are subject to the absolute and unqualified right of the initial carrier to determine routing beyond its own line."

I attended the conference of representatives of the lines interested in these tariffs at which this rule was considered and, I believe, therefore, that I am somewhat conversant with the conditions which prompted the adoption of this rule and think I can truthfully say that the provision was not inserted with a view of taking from the shipper any right or privilege theretofore enjoyed, but, on the other hand, some such rule was considered necessary for the protection of both the carriers and the shippers. It protects the carrier from the results of misrouting on the part of the shippers over unauthorized routes, and it protects the shippers from the mistakes of the initial line in billing freight via routes over which the tariff would not apply.

The former tariffs contained a provision that the rates applied only via routes over which there was an agreed basis of divisions. Of course, such a provision is now in conflict with the rules of the Interstate Commerce Commission as to the publication of tariffs.

In constructing the new tariffs, effective January 1, 1909, under the commission's rules, a great many changes in the former practice of stating the rates had to be made, and the railway companies, as they could not insert the same provision as contained in the former tariffs, gave this subject of routing very careful consideration. The rules of the commission require that the routing must be specific in each case or omitted entirely. All of the routes between shipping points and destination could not be included in these tariffs, as it would involve an amount of labor and such a volume of detail information as to make such a plan impracticable if not impossible.



That the absence of any restricting clause as to routing would seriously embarrass the carriers is a fact beyond question. With such a clause in the tariff, if the initial line permits the wrong routing of freight they are responsible to the shippers as well as to their connections for any overcharge resulting therefrom.

There is no arrangement between the carriers which permits of the routing of freight for the Pacific coast from Poughkeepsie, N. Y., via the New York Central, care of the Pennsylvania Railroad at Jersey City, but there is a route from Poughkeepsie via the New York Central to New York, thence via steamer lines through the Gulf ports; nor any arrangement for routing from Boston via steamers to New York and thence via the New York Central Railway, but there is an authorized route from Boston via steamers to New York and thence via the steamer line through the Gulf ports; nor is there any arrangement for routing from Richmond, Va., via the Southern Railway to Memphis, Tenn., Illinois Central Railroad, St. Paul and the Northern Pacific, but there is an authorized route, we understand, from Richmond via the Southern Railway and the southern transcontinental lines.

The above cases of misrouting are some that have actually been brought to our attention and the provision in the tariff above quoted prevents the misrouting in this way by the shippers and makes the initial line responsible for the forwarding of the business via a route over which the through rates will be protected. The lines that would be parties to the unauthorized routes named above are all parties to the transcontinental tariffs.

To make a little clearer the difficulties with reference to this routing proposition, I would call your attention to the fact that traffic from Cincinnati, Ohio, for instance, can be routed via Cleveland, or Toledo, or Detroit, or Mackinaw, or via the various cross lake Michigan routes, or via the different Mississippi River crossings between St. Paul and New Orleans. Each one of these separate routes is open to one or more of the transcontinental lines to one or more of the Pacific coast points, but none of these routes are open for traffic via all the transcontinental lines to all of the Pacific coast points. The rates in these tariffs apply, therefore, from Cincinnati via the Big Four and Cleveland, via certain routes to certain Pacific coast points, and they also apply from Cincinnati via the Louisville and Nashville Railway and New Orleans or Memphis via other transcontinental lines to the same or other Pacific coast points.

Take another case for instance. The rates in these tariffs apply from Johnstown, Pa., via Baltimore, Philadelphia, or New York, in connection with steamer lines, they also apply from Johnstown via Buffalo and the various northern junction points, also via the Mississippi gateways as indicated above. The same conditions as to application of the tariff apply from practically all of the eastern points. This we believe will make it clear to you why the proposition for showing the routes in the tariff had to be discarded.

If there was any way of stating a definite provision for routing I have no doubt the transcontinental lines would be glad to adopt it, but under the rules laid down by the commission where no routes are specified it is assumed that the rates are applicable via all routes.

You have been long enough in the railway-traffic service, I think, to fully appreciate the difficulties which the transcontinental lines had to contend with. Our attention has not been called to a single complaint which has been the result of the enforcement of this rule on the part of the railway companies; as a matter of fact, we believe that the shippers are being accorded the same privilege of selecting their routes beyond the connecting line as heretofore, except in cases where the routing has been via lines with which there was no arrangement for the protection of through rates.

In view of these conditions do you not think that the plan adopted was the best one, and do you know of any cases where this rule has been used to take from the shipper the right to designate the intermediate or delivering line, except under some such conditions as I have referred to above?

It is possible that conditions might arise in the matter of car supply or in case of misuse of equipment by some particular line where the initial line would want to retain control over its own cars and prevent loading over lines that failed to observe the usual rules for the interchange of equipment and might find it necessary to that extent to embargo certain routes.

Yours, truly,

J. B. BAIRD,  
General Freight Agent.

Also a statement of Thomas Carl Spelling, attorney for the Freight-payers' League of the United States, in opposition to certain provisions of the pending bill, together with some amendments suggested by him to the commodities-clause bill of Mr. Wanger.

(Following is the statement and amendments referred to:)

STATEMENT OF THOMAS CARL SPELLING, ATTORNEY FOR FREIGHT-PAYERS' LEAGUE OF THE UNITED STATES.

OPPOSITION TO CERTAIN PROVISIONS.

Preliminarily, I call attention to the fact that in discussions before the committees thus far only the slightest attention has been given to the cost of transportation. The real freight payers of the country have not been represented here, except, as we concede, they are represented by members of the committees. They are the retail purchasers of the country upon whom are finally shifted all freight charges, and to a great extent the fares paid for passenger service. Divers issues, in some of which they have but a remote interest, are raised by pending bills, such, for instance, as routing freight, uniformity and negotiability of bills of lading, and quotation and protection of rates. On these the representatives of the carriers and of the big shippers, or rather of associations of big shippers, have been heard at length. From the hearings I find no reasons for discussing any of these side issues. They raise mere questions of relative convenience and inconvenience as between these large interests, and I am disposed to take no part in discussing them.

EFFORTS TO LEGALIZE AGREEMENTS IN RESTRAINT OF COMMERCE.

In all that has been said by the representatives of big shippers there is scarcely a word on the proposition to authorize and legalize traffic agreements, except support for it. Herein we have conclusive proof that they do not represent, and have no interest in common with, those upon whom finally rests the burden of the cost of transportation. Their other contentions, as against the carriers, whether unfounded or meritorious, I shall leave where I find them.

The most important questions before the committees, the same being embodied in various bills, spring from, hinge on, and always revert to rates for service—the cost of transportation—however obscured by forms of language. Let the railroads be conceded the unrestrained, unsupervised power to agree upon their own rates and classifications, to adhere to them and change them at will, and they will take but slight interest in other legislative proposals. Indeed, in the absence of artificial restraints and obstacles, there would be but little need for governmental interference with rates; so that the problem of rate regulation is, after all, one of controlling monopolies and monopolistic tendencies.

I will now call attention to the fact that section 7 of the Elkins-Townsend bills is a wide departure from anything to be found in any plank of any party platform. The Republican platform of 1908 declared for the further amendment of the interstate commerce act "so as to give the railroads the right to make and publish traffic agreements subject to the approval of the commission, but maintaining always the principle of competition between naturally competing lines, and avoiding the common control of such lines by any means whatsoever." The Democratic national platform of 1908 contained a declaration identical in meaning with the Republican platform and reading as follows: "We further declare that all agreements of traffic or other associations of railway agents affecting interstate rates, service, or classification shall be unlawful, unless filed with and approved by the Interstate Commerce Commission." The difference between the declarations of the platforms and the provision in the bills is clearly important and material. Approval includes the passing of judgment after full investigation and acquisition of knowledge of the whole proceeding, information as to relations and motives and of the effect of all the terms of the agreement. The power to approve implies the power to disapprove, and would confer upon the commission a power equivalent to the power now exercised by the courts in cases arising under the antitrust act. To give the commission the power to approve or disapprove would be to enact legislation supplementary to, and in aid of the antitrust act, and to give jurisdiction over restrictive contracts and the power to annul them to a tribunal additional to the federal courts. That proposition, as anyone can see, is entirely different from one giving the agreement the status of a valid, voluntary, independent, unsupervised contract, over which the commissioners are given no more control than an unofficial citizen would have with respect to any other contract.

The commissioners could get just as much information about the rates agreed upon at the meetings of traffic agents, and exercise just as much power over them under

existing laws, as they could if the whole of section 7 became a part of the law. Having, as I think, made it clear that section 7 confers no additional power upon the commission, in which view I have the support of able counsel appearing here for the carriers, I call attention to the case of *China and Japan Trading Company v. Georgia Central Railroad* (12 I. C. C. Rep., 236), and the *Tift* case (10 I. C. C. Rep., 577), holding that the power of the commission is limited to a determination of whether the rate is reasonable, unreasonable, or discriminatory, without regard to whether it was or not the result of an agreement made in violation of the antitrust act.

If anyone believes that, with the antitrust act repealed in its applicability to railroads, the people would have any protection against grinding, oppressive, and ruinous monopoly, let him reflect that the rates fixed by such competition as we now have is the only guide for determining the reasonableness or unreasonableness of railroad rates. The Supreme Court has in three cases held the antitrust act applicable to traffic agreements among carriers in interstate commerce; and no unbiased person, not already satisfied, can read the opinions of the court in the *Trans-Missouri Freight* case (166 U. S., 290), *Joint Traffic Association* case (171 U. S., 505), and the *Northern Securities* case (193 U. S., 197), without being convinced that the reasons founded on public safety and policy for applying the statute to such combinations are stronger even than the legal reasons; also that the economic reasons are here at least equally as strong as in cases of industrial restraints.

I have read the statement of Mr. E. B. Pierce, representing the Rock Island Railroad, describing how by concert and consensus of opinion the rates of competing carriers are often equalized and harmonized, and I might for argument's sake safely agree with him that such arrangements, where brought about in the manner described by him, do not violate the antitrust act. Theoretically, and according to the strict letter of judicial utterances, they might be included within the inhibition of the statute, but according to his estimate of their effect and substance they do not restrain, but rather promote, interstate commerce. If this be so, section 7 of the Elkins-Townsend bill is not needed, or if needed at all, goes far beyond any existing necessity. It authorizes agreements of all kinds, even of the most far-reaching character, agreements having the force and effect of municipal law, agreements made in secret which may create monopolies beyond all regulative control. We can not fully understand all that the proposition imports, or foresee what will follow its enactment, without a wider range of observation and discussion than the record of the proceedings of the committee to date discloses.

What are the present powers of, and sources of evidence available to, the commission, upon a question of the reasonableness or unreasonableness of a rate? The Hepburn Act merely prescribes for the guidance of the commission a rule of law, dependent for its meaning in any particular case upon the view point or opinion of a judge or commissioner. No standard or basis founded upon fact is established by the act, or exists, and notwithstanding the considerable space filled with the reports of the commission, the mind finds in none of them any firm legal ground upon which to rest. Of necessity, the discussions before and by the commission are largely speculative. The only qualification of this general proposition is referable to the few cases in which resort could be had for comparison of the rate complained of with competitive rates; that is to say, where a rate increased at a meeting of traffic managers was challenged as to its reasonableness and the commissioners could refer to prior rates established by competition.

But now let section 7 be enacted and a little time pass during which the new conditions brought about by such a radical change become crystallized, and the commission will be so completely deprived of data and sources of light previously gleaned from competitive rates that it might almost as well make no examinations whatever as the basis for its orders. The necessity for preserving competition as an auxiliary to any exercise of the power to regulate rates is so ably and convincingly shown by Circuit Judge Shiras (dissenting in the *Trans-Missouri Freight* Case, 58 Fed. Rep., 90 et seq.), that I would like to insert a lengthy extract, but desist because of a presumption that any members of the committee not already familiar with it will consult it. It is an aphorism of economics, indorsed by such authorities as Stephenson in England and Charles Francis Adams in America, that where railroad combination is possible competition is impossible.

It may be safely conceded that meetings must be held by, and agreements made between, traffic agents from time to time, and that some such agreements are violative of the spirit and letter of the antitrust act; also that the law should not be harshly or strictly enforced in such cases. Indulgence and leniency should be distinguished, however, from unrestrained license, such as is given by said provision. Notwithstanding a plausible and righteous theory that all penal laws should be either strictly enforced or repealed, it is found in practice that scarcely any penal law is so enforced.

The transportation of the country abounds in discriminations and favors to shippers never noticed by the authorities and which, perhaps, ought not to be noticed. Of the millions of rates filed annually with the commission probably half could be shown to be unreasonably high, low, or discriminative. But nothing would be gained by it in the end, even if the commission could dispose of such an enormous mass of business. In the mass are no doubt many flagrant violations of law deserving attention, but receiving none. Every city has trade associations and shippers' leagues which, while technically violating the antitrust act, really promote more than they restrain trade, and ought not to be prosecuted. Many police regulations in our cities are violated daily and hourly, prosecutions and punishments being resorted to only in flagrant cases. At any rate, less is to be feared from agreements between carriers with the stamp of illegality upon them and the condemnation of the law hanging over them than from a congressional enactment such as is here proposed. Under such broad and sweeping authority as this provision all interstate rates, whether joint or individual, would be quickly absorbed in traffic agreements with local and terminal differentials as a feature, competition would disappear, and in the absence of officers clothed with initiatory or general powers and of an appraisal of values all effective governmental regulation would disappear.

I am prepared also to fully agree with Mr. Pierce that, if there is to be any such legislation at all as that proposed, the so-called qualifications and limitations found in section 7 may as well be lopped off as cumbersome and useless. It is true, as has been stated, that the commissioners would still have preserved to them the power to pass upon the question of reasonableness, but, as before shown, that would be, under the conditions then created, little if anything other than an arbitrary and unreasoning discretion. They would be no more justified in holding a dollar rate unreasonably high on a given traffic from Kansas City to Chicago than they would a fifty-cent rate.

The proposed provision is an outright repeal of the antitrust act in so far as it applies to railroads, nothing more nor less. It may therefore be truly said that it has no place in a bill amendatory to the interstate commerce act. It is an amendment to the antitrust act, and the provision should be embodied in a separate bill before being considered. And when so treated it has far less to commend it than the Hepburn-Warner amendment to the antitrust act considered by the Judiciary Committee of both House and Senate two years ago, because that did purport to place certain supervisory powers in the hands of the Commissioner of Corporations. The proponents of that measure were heard day after day for several weeks and never succeeded in winning a single member of either committee to its support.

Some of the intolerable abuses and impositions resting to-day upon the commerce and productions of the country were established through legislative acquiescence. Thus, it long ago became the settled policy of the railroads to destroy competition by navigation on our rivers, lakes, and adjacent seas. When the original interstate commerce act was passed that policy was already deeply rooted. But the same fear of disturbing business and checking a tide of prosperity which now so powerfully influences some political leaders then prevailed, and instead of extracting by the roots that enormous wrong, Congress inserted in the provision prohibiting a preference or advantage to any particular person, company, firm, or corporation, or locality, or any particular description of traffic, the words "undue or unreasonable," now generally admitted to have been, as there used, of enormously evil import. Nevertheless the railroads abused the license thus given to the uttermost bounds. As a result, no sense of a just proportion is seen in the country's development. Commerce and manufacturing have grown to exaggerated and abnormal magnitudes in certain favored localities, while the most fertile sections, those well able to satisfy from the products of the soil sufficient to satisfy most of our real needs, have had but little more than the normal increase of population—all due to the insertion and retention in the law of these words, rendering abortive every attempt of the Interstate Commerce Commission to enforce justice to many important sections of the country. This bit of history contains an important lesson. Whether by chance or design, or by their own inadvertence, the railroads were caught in the meshes of the antitrust act is unimportant. The important fact is that they were included, notwithstanding that they have not been as firmly held as might be desired. At any rate, to the deterrent effect of the statute is due the little competition we have enjoyed and still enjoy in transportation by rail. Under the influence of popular demands for its enforcement, and because of the constant menace of prosecution, the existence of the statute has restrained excesses, and the rates, even though fixed by concerted action, have been approximately reasonable. And now that a serious attempt is being made to have all the existent traffic associations, and all that may be hereafter created, sanctified in legislation, we should take warning from the result of undue indulgence shown to the same dominating interests in this matter of water competition. There is no popular demand for this amendment.

Whatever of public sentiment exists in favor of it has been manufactured to order. It is true that a struggle has been in progress for several years on this subject, but it was a struggle between powerful financial interests needing no protection and the general interests of the nation needing the protection which the antitrust act was designed to furnish and has, to some extent, afforded. The principal, if not the only incentive for urging this amendment is the power it will give the railroads to increase rates and maintain or perpetuate high rates. The asserted inconvenience or embarrassment incident to obeying the law is entitled to scant consideration against the momentous results to flow from a compliance with their demands. There is no instance on record of any traffic manager committing suicide, or even withdrawing from public notice, by reason of having participated in a conference on rates.

The aggregate of a vast number of transactions constitutes interstate and foreign commerce in general sense. And this commerce is of general or rather universal interest. If it might be called property, then it is the common property of national citizenship, and each and every person is equally a community participant. It is immaterial, in this respect, that some great corporation largely contributes to the aggregate and that individuals contribute only occasionally and infinitesimally. All are on equal footing. The principle of equality can be more justly said to control here than in many other affairs of government.

It has been judicially declared that the right to participate in commerce is inalienable. This must be so, in a qualified sense. And if equality of right and privilege be an underlying principle of our Government, then no legislation which grants immunity to a class of persons, natural or artificial, from the established rule of freedom and equality, and enforces it against others, can be defended from any standpoint of justice.

These principles were kept constantly in mind and often referred to in the debates preceding the enactment of the antitrust act. If any change is desired, this principle of equality can only be conformed to by an outright repeal of the whole statute. The only other way to promote equality is to let the law stand as it is. Every principle of fairness and equality will be violated if any amendment be made which creates an exemption.

We are now "at the parting of the ways" on this issue, and the question is whether we shall reverse the wheels of progress in legislation, disappoint the hopes of the whole nation now centered upon the reestablishment of economic justice, and undo the wise work of Congress twenty years ago. If it be done, it will be difficult to prevent a widespread belief that it is done for the sole benefit of powerful financial interests already possessed of a taxing power greater, more firmly held, and more far-reaching than that of any government, national or state.

#### REGULATION OF CORPORATE MANAGEMENT.

Other legislative proposals are before the committees of sufficient general importance to warrant at least brief discussion by anyone fortunate enough to secure the attention of the committee. I refer especially to all those provisions, found in two or three sections, pertaining to stock and bond issues, capitalization, and acquisition by one carrier of the stocks of others. I would have it clearly understood that I consider all these features of corporate management susceptible of great abuses; and yet I agree fully with the representatives of the railroads who have spoken before the committees to the effect that further legislation by Congress is not the remedy for them. In fact, I think it would be found that Congress lacks the constitutional power to effectively deal with such abuses by legislation directly applicable to those internal affairs of corporations created by the States and governed in these respects by state laws.

Congress may regulate, that is to say, make rules for the government of, interstate commerce. In exercising this power, however much it may appear to be regulating objects and things which are merely its adjuncts and instruments, the government is never on safe, that is to say, constitutional, ground, unless the distinction between the thing to be regulated (interstate commerce) and these adjuncts and instrumentalities is kept in mind. The dealings between stockholders, and between stockholders and their corporations, do not directly relate to, nor do they directly affect, interstate commerce, any more than would the contracts between partners who, in a firm name, engage in interstate commerce. Congress has nothing whatever to do by legislation directly applicable thereto, with the division of ownership into shares nor with the disposition of the shares.

The Federal Government is no more concerned with capitalization and stock transfers of railroad corporations, per se, than with the deeds and muniments of title to real estate which it has power to condemn for its purposes. These must, indeed, be examined to ascertain the extent of interest of the parties against whom condemnation

suits are begun, and to ascertain if the title which the Government may acquire is a good title; but it does not by any means follow from the exercise of the power of eminent domain in such cases that Congress can regulate titles and transfers of real estate within the States.

At this point, this question arises in many minds: Suppose a railroad company, by purchases of stock, gets control of a competing road and acquires a monopoly of interstate commerce in a section of the country, does not the contention deny to the Government a remedy in a case like that? The answer is, that while Congress can not directly legislate concerning stock ownership and stock transfers, it can legislate for the control of interstate commerce, and control includes protection. And, of course, protection includes remedies, penal and civil. And when, as in the antitrust act, restraint and monopoly are forbidden and a case under that statute arises, the Government has unlimited power within the rules of evidence to prove its case. It can prove the means, agencies, and instrumentalities by which a monopoly has been attempted or created or restraint imposed. If an attempt has been made to violate the statute by acquisition of stock in rival companies, that can be shown, the same as if it were by the execution of leases, by restrictive contracts, or otherwise. And such transactions may be undone and set aside or enjoined by the court when necessary to give the Government the relief to which it is entitled. But that all belongs to the law of evidence and procedure and has nothing to do with substantive law such as an act making rules for interstate commerce. Of course, Congress may establish rules of evidence and procedure or may change them. It may do so in a regulating statute or in a separate statute. But, in doing so, it is exercising a power other than that conferred by the interstate-commerce clause, and which can not be so extended as to affect substantive rights.

Flowing from the doctrine that Congress can legislate to such effect there has originated a dangerous economic heresy. The Interstate Commerce Commission recognizes and, in so far as an executive bureau can, gives currency or vitality to a fallacious rule for determining reasonable rates; that is to say, the commissioners accept the dictum, not of any court, or of Congress, but of the railroads themselves and the Interstate Commerce Commission, that at all events and under all circumstances the stockholders in railroad companies are entitled to a reasonable return upon their investments. That doctrine runs through many orders made by the commission and views of commissioners, published in their reports and otherwise, and dominates the proposed legislation in some of the bills. It simply means that when the Government comes to the exercise of its power over interstate commerce, given by the Constitution unqualifiedly, it must guarantee to a certain class of investments, namely, those made by railroad stockholders, a certain and steady return, regardless of the fate of any and all other forms of investment.

It would appear sufficient for a complete refutation of the proposition merely to state it. But it has been of late so frequently promulgated by the Interstate Commerce Commission as to justify a suspicion that the commissioners entertain a design to fasten it upon the freight payers of the country as an economic principle. And if it be an unsound and dangerous heresy, the sooner it is shown to be such the better. It is totally inconsistent with the rule accepted as fundamental by the commission, as well as all intelligent men who have seriously considered the subject, that the people are entitled to reasonable rates; that is to say, such rates as would be produced by normal conditions, by which is meant competitive conditions. That rule should be observed by Congress and by governmental agencies, without regard to the effect upon the investments of individuals. One and the same illustration will show both the injustice of the rule given currency by the commissioners and the enormity of its injustice. Here are two leading cities, New York and Chicago. When railroad construction first began, a line of railway was constructed over a natural route—along the lake shores by way of Niagara Falls, Buffalo, and Albany—between them. Another line was constructed along a route almost or quite as judicious and economical by way of Pittsburg and Philadelphia. Contemporaneously, a third construction was undertaken and finally completed over an indirect route to the Ohio River, and thence across a mountainous region by way of Washington and Baltimore. The fraudulent financing of construction companies and stock bonuses to bondholders may have been a feature of all these enterprises, so we will pass that all by. But the third of these enterprises was ill-advised and unnecessary, except for local service. That is to say, for the Chicago-New York traffic and for the Chicago-Pittsburg and Chicago-Philadelphia traffic it was not needed. Nevertheless its projectors persisted, and finally by stock and bond flotations and by inflations, by enormous expansions of credit, and by leasing other roads which would otherwise have been unprofitable, succeeded in establishing a zigzag line reaching from Chicago to New York

Now the question of fixing rates over this third line comes before the commission, and it applies its rule. The question immediately arises, Why should the people pay an exorbitant rate on traffic between Chicago and New York on all these lines, on the plea that such rate is necessary to insure a net profit to the stockholders in the roundabout road, but which is so exorbitant on the other two lines that it enables them not only to pay dividends to their stockholders, but to accumulate vast surpluses to be expended in the construction of new lines and terminals?

#### AMENDMENT OF THE COMMODITIES CLAUSE.

The first Wanger bill (9284) has been superseded by H. R. 9504. I will not attempt to discuss it at length, but shall merely point out the more important defects.

The first objection involves merely a question of policy, so I will merely state it. Timber and the manufactured products thereof are exempted from the operation of the bill, following the language of the existing provision. Secondly, it is not declared to be unlawful for the carrier to transport a commodity in which it has an interest, but only where the commodity is "manufactured, mined, or produced by it, or under its authority, and owned by it." Much of the coal product entering into interstate commerce is now transported by carriers under contract to sell for the producer and retain a percentage of the proceeds in lieu of freight charges. Especially does this practice prevail in the Pennsylvania coal field. It is easily seen what complete control is thus given to the railroads. This bill would not reach such cases.

Third, while the bill makes a stagger or pretense of limiting control through stockholding interest in the producing company, it really sanctions and concedes enough to insure and perpetuate it. Even if holding one-third the stock did not insure control, it would only be necessary for one of the directors of the railroad, or holding company standing between, to get control of a little more than one sixth, to give it an actual majority. It will be noted that, by this bill, present conditions are to be tolerated and all past and future violations condoned for a period of three years from the date when the original provision took effect. The railroads have made no attempt to obey the law. Their practices have been violative of the antitrust and interstate-commerce laws from the first. (See *Chesapeake Coal Case*, 200 U. S. Rep.)

Fourthly, unless some addition were made to the bill neither the Government nor any individual would have any remedy, notwithstanding the declaration of unlawfulness. Had the point been made in the commodities cases they must have been thrown out of court for want of facts entitling the plaintiff to any relief. But the defendants felt secure upon their constitutional objections and raised no jurisdictional point. This matter is important, and I feel the necessity of presenting it at some length, and must deal with the technique of construction and procedure.

No task of construction to determine whether the penal provisions of section 10 of the interstate-commerce act would apply was involved in the commodities cases (213 U. S., 366). But the contentions of the defendants on the theory that the penal provision of section 10 was applicable, and that the commodities clause was so lacking in definiteness as to render it totally abortive, could not be satisfactorily answered. The best we could do was to evade their objections, which we successfully did.

But, as before stated (in different form), the interstate-commerce act gives the Government no civil remedy, either by mandamus, injunction, or otherwise.

First, mandamus is not available.

In the absence of a statute, federal courts have no original jurisdiction in mandamus. That is to say, the jurisdiction conferred by the judiciary act of 1789 is ancillary to and in aid of an original jurisdiction already acquired over some other matter of legislation. When a statute such as the eighth paragraph of section 20, interstate-commerce act, confers a jurisdiction it is exercised according to the rules of common law. See *U. S. v. Union Pacific Railway Company* (91 U. S., 72); also same case, (3 Dill. (U. S.), 4 Dill. (U. S.).)

It is well settled that mandamus and injunction can not be used interchangeably; that is, the functions of mandamus can not be perverted to compelling abstinence from action. (Legg v. Mayor of Annapolis, 42 Md., 203, and cases cited; *Crawford v. Carson*, 35 Ark., 565; *Supervisors v. United States*, 18 Wall., 77; *Ex parte Cutting*, 94 U. S., 20.)

It is true that paragraph 8, section 20, construed in its broadest sense, might be held to authorize the writ to prevent positive violations of the commodities clause. But that would lead to an absurdity which will always be avoided if possible. Now, a different construction is not only possible but necessary in order to harmonize this with other provisions of the act.

Where language is capable of a broad interpretation which would lead to inconvenience or absurdity or conflict with other provisions in the same act, and it is also

susceptible of a narrower meaning which will make it conform to settled principles or give effect to all parts of the act, such narrower meaning will be accepted in construing the statute.

Now, assuming that said paragraph 8 allows a resort to mandamus to coerce obedience to the commodities clause, let us see what it leads to. It is impossible to find any connection between said paragraph 8 and the commodities clause, except that both are found in the same scheme of legislation. Both are brought in from separate sources as amendments.

Let us ask and answer the question. What could be alleged in an application by the Attorney-General for mandamus under said eighth paragraph; and what would be the legal effect, if any, of the legislation? Facts could be alleged showing that a defendant had violated a criminal statute. In a mandamus proceeding such allegation would be wholly immaterial. What else could be alleged? It is difficult to conceive of any other facts that could be set up other than facts showing an intention to commit further violations. But in addition to the objection to the use of the remedy to coerce abstinence, the proper office of injunction, mandamus, or whatever the character of the case, the court will not assume jurisdiction to compel general obedience of the law, but only as to some threatened specific violation. (*Chesapeake Coal case*, 200 U. S., 391; *Swift & Co. v. United States* (*Beef Trust case*), 196 U. S., 375.) Such allegations could be reached by a general demurrer. But even if the defendants went to trial and judgment, the objections could be raised for the first time in the appellate court. Anyhow, could any competent evidence be produced in any case to prove criminal intentions of defendant as to the future?

Now, what is a reasonable construction of the parts which make up this interstate-commerce act? Since the Attorney-General can only apply for mandamus at the request of the commission, it was evidently not intended to take the enforcement of even this part of the law out of the hands of the commission, where Congress has reposed the duty, but to make these services available when, in the opinion of the commission, there was urgent necessity for an immediate resort to mandamus without waiting for the slower process of making an investigation and order as provided in section 16. If the act required by the order to be done was of a positive character, mandamus was to issue; if abstinence on the part of the defendant was required, the remedy was to be injunction. And there are many duties requiring action specified in the act upon which the remedy given in section 20 could operate, so it is not necessary to pervert it. The mandamus mentioned in section 16 is the ordinary remedy by that name in use generally in the federal courts; that is, auxiliary or ancillary to ordinary jurisdiction.

The draftsman of that part knew what he was about. He knew the wide difference between the two remedies, mandamus and injunction, and he provided both, each to perform its proper function. But when we come to paragraph 8 of section 20, we see evidence of neglect; and in the Congressional Record we find other evidences of neglect. It was the express intention of certain Senators to add the remedy of injunction to said paragraph 8, in order to complete it. (See vol. 40, pt. 7, pp. 6617 and 6620, 59th Cong.) But it was never done.

Secondly, is there any other civil remedy? An examination of the authorities convinces one that a case under the commodities clause can not be brought under said paragraph 8, nor in the name of the United States at all, which will confer jurisdiction to grant an injunction.

It appeared to be the accepted doctrine prior to the *Debs case* (158 U. S.) that the Government has no standing in a federal court for equitable relief, except in a case coming within established jurisdiction. In that case it was held that to protect the public from a nuisance resulting in great public injury and inconvenience, or in case, perhaps, of any great public danger, the Government might have the preventive remedy. Jurisdiction may be conferred by statute to grant to the United States an injunction in any case, even to prevent crime, for instance criminal restraint of trade. But we seek in vain for statutory jurisdiction to grant an injunction under said paragraph 8 of section 20, interstate-commerce act. It seems clear that a violation of the commodities clause involves no such public danger or injury as would authorize the granting of an injunction, as danger and injury are defined in the *Debs case* and other cases cited above.

Thirdly, is there any authority for a mandamus or an injunction at suit of the commission under section 16? It seems to me clear that the commission exhausts its authority with reference to such purely criminal clauses of the act as the commodities clause when it follows the procedure found in the first paragraph of section 12; that is, makes investigations and takes any other proper steps to set the prosecuting officers of the Government in motion; and that it has authority to make orders and have them



enforced by civil remedies (see sec. 16) only in cases where some discretion is vested in the commission. No case of this kind could arise under the commodities clause.

As a general conclusion, I wish to say that if the Wanger bill should become a law in its present form there would exist no remedy, civil or criminal, of which any court would have jurisdiction by which to enforce the commodities clause. In other words, the Government would find itself then exactly where it is to-day.

The Cummins bill (S. 3709) seems to meet the situation, and as there is nothing in the Townsend bill on the subject, an identical bill should be introduced in the House and reported by the committee.

The evil sought to be remedied by the commodities clause is distinct from others complained of. That clause of the interstate-commerce acts should be amended so as to make it effective and enforceable.

**PUBLIC POLICY UNDERLYING COMMODITIES CLAUSE. (HAVING SPECIAL REFERENCE TO BILLS THAT HAVE BEEN INTRODUCED TO AMEND THE COMMODITIES CLAUSE.)**

An interest on the part of corporations engaged in transportation in the commodities transported by them was long ago condemned in England, as was shown in the Chesapeake Coal case (200 U. S., 361), and is no longer tolerated in that country. In both England and Germany, railroad companies may acquire property, but only such as they need in their business as common carriers. Everywhere it is realized that such a combination of interests and avocations would, if sanctioned, become an intolerable economic evil which would grow worse and worse by rapid strides; that, if permitted, it would result in the welding together of all interests sufficiently profitable to tempt the hand of greed, until little would be left for the public, and that little the least desirable; that those inside the combinations thus formed would comprise just two classes of widely divergent conditions, the one class rich beyond the wildest conceptions, and the other miserably poor, wholly dependent and subservient.

Such a rank weed of rapid growth has attained only limited stature in this country when compared to possibilities. Nevertheless, experience should warn us that it is never safe to depend on men possessing financial power to set a limit to avarice, especially if they be given legal sanction by state legislation. If the principle that the combination of the two incompatible interests, producer and carrier, is beyond the reach of any governmental authority be upheld, then whatever is possible for interstate corporation to do it is probable that they will do.

Let it not be overlooked that the evil against which the commodities clause was originally directed must be met with a rule as broad as the nation and as comprehensive as material wealth within the nation. Let it be borne in mind that ownership or interest is ownership or interest regardless of environment, regardless of circumstances of loss, inconvenience or hardship, and that no peculiar circumstances can distinguish one such case from others where the ownership or interest is found, though such circumstances be absent; also that if the railroads can transport coal which they own or in which they have an interest, they can so increase the cost of coal to the manufacturers of steel and iron products as to force a sale to them of all the steel plants and deposits of iron ores in the country, to say nothing of other such interests. They will require little or no cash for this purpose, only the power which the triumph of such a principle will give them.

Now, will resources of copper and lead escape? These, like numerous other resources essential to civilized existence, are to be found only in isolated places and limited areas; and, to be of any value, require transportation.

To complete the financial despotism to thus result, it is only necessary to contemplate a unity of control of the railroads. The disastrous and far-reaching result of the Northern Securities scheme was thwarted, but the result of what may follow a failure to further legislate on this subject may be then more fatal to public and private interests.

The circuit court in the Commodities cases pointed out the total dependence of 15,000,000 of our population upon certain anthracite combinations. Would it not be better even for that one-sixth of the population if they suffered greatly for a time from a scarcity of one kind of coal if ultimately they were freed? But Congress has not attempted here to legislate for 15,000,000, but for 90,000,000 or 100,000,000, people now under its jurisdiction, to say nothing of the hundreds of millions to succeed them.

The Commodities clause, as heretofore formulated, embodies a principle applicable to the whole national domain, not limited to coal but to an infinite variety of commodities. The contention of counsel in the Commodities cases constitutes an object lesson and a startling illustration of the tendency and result of tolerating and legalizing what the anthracite combinations have done. We are thereby impressed that the

time has come for a determined stand—for congressional action to save the people from a financial despotism over them beside which the political centralization against which warning was given by the circuit court is of small import. Of what use or benefit will be the knowledge that political sovereignty of the States has been enhanced and federal sovereignty restricted when the people within the conventional boundaries of the States have been impoverished, and have seen their natural resources extracted and sent broadcast over the world by giant monopolies bent solely upon the enrichment of a few industrial barons? These care little or nothing for present or future consequences. No matter how sad and disastrous to the race their exploitations, they and their successors will still have not only luxury, but almost limitless wealth. To the bleakness and despair that shall visit our shores in future time they need not give a thought. They will have the means to purchase not only comfort, but luxury, so long as men with hands to toil remain on the earth.

Of course there are those among the myriad productions of the country which do not require the protection of the commodities clause. There are many instances in which it will be to the advantage of the interstate railroads to merely hold mortgages on the resources and labor of the country, and exercise with respect to them the toll-taking or taxing powers which they possess. If, in such cases, they foreclosed and secured actual ownership, they would have the trouble and expense of management. And self-supporting proprietary labor, still subservient and dependent, will be better for them than if they absorbed every avocation and industry in which there is a profit. But there are many industries whose areas of productivity, like that of anthracite coal, are limited. Now, let the principle be once acquiesced in that Congress can not protect the people from the so-called "state policy," "local enterprises," or whatever it may be called, whereby a State can promote monopolies such as we have been describing, and the operations of the anthracite roads will be duplicated in every State whose state legislation can be so shaped as to give them sanction, if there happens to be a prospect that considerable profit will be realized by getting control of a particular industry.

Some lines of production are peculiar to certain States. The production of oranges and other citrus fruits is limited to the coast section of Florida and half a dozen counties in southern California. The production of certain commodities of general use, in marketable quantities, is limited to southwestern Texas, principally in the neighborhood of San Antonio. And we might mention iron, marble, the best qualities of building stone, along with others. While timber and its products are exempted under the statute as it now stands, the policy of the nation may at any time change, and ought to change with respect to that necessity of life.

#### STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN, INTER-STATE COMMERCE COMMISSION—Continued.

The CHAIRMAN. Judge, we are at your service.

Mr. KNAPP. Mr. Chairman, I am at the service of the committee. Recurring to the subject which was under discussion when the committee adjourned yesterday, if I might be permitted to add a word on through routes and joint rates, bearing both upon the limitation in the present law and the limitation which would be created under the Townsend bill, assuming, as I think we may, that a road having an established line with good facilities between A and B ought not to be required to short-haul its traffic—that is, to allow a portion of its line to be united with another line and make a new route between those points, still there may be cases where that ought to be done in the public interest. Assuming, as I do, that where there is an existing route, part rail and part water, which is satisfactory, ordinarily, or in many cases, the commission ought not to establish an additional route, part rail and part water, between the same points, yet there are cases, I think, where that ought to be done. Assuming that under present conditions, there would rarely be public need of compelling through routes between steam and electric lines, where the latter was wholly or mainly engaged in passenger business, there may be cases where that ought to be done in the public interest; and in the rapid

development which is now going on in electric transportation it is altogether probable that in the near future cases will arise where joint rates and through routes should be established between steam and trolley lines as could not be done under the limitations in the present bill.

Now, why should not the commission be trusted to exercise a wise discretion in each case? Why should it not be trusted not to do injustice in any case as between conflicting interests? The commission is now given the authority to determine the reasonable rate, and to prescribe it for the future; and that determination in ordinary cases is final. It can pass upon the reasonableness of rules and regulations, and, under the Townsend bill, and under other bills upon this subject, the commission is to have power to fix the classification of an article independent of its rate; and under the Townsend bill it will have power—very great power—over the issuing of railroad securities. It will fix the value of railroads to determine what stocks and bonds shall be issued. If it is to be given discretionary authority in matters of such consequence as these, why should it not have rather broad discretionary powers in reference to the creation of additional through routes where the public interest seems to require such action?

That, in a brief word, covers about all that I care to say on that subject unless there is some specific inquiry.

The CHAIRMAN. While under these propositions the commission would be given wide latitude of discretion, in the long run, in the construction of law, isn't it almost inevitable that certain principles shall be adopted, and the broad administration of the law must follow those principles and can not make arbitrary distinctions?

Mr. KNAPP. Measurably that is true, Mr. Chairman, but not to the same extent in administrative policy as in judicial determination.

The CHAIRMAN. While you are laying down the construction of law and the administration of certain principles about railroads, and while nominally you are administrative officers, you pay as much attention to precedent as any court does?

Mr. KNAPP. I should hesitate to assent to the proposition as broadly as you have stated it, because the facts and circumstances in one case differ so materially from the facts and circumstances in other cases as to be controlling of the determination.

The CHAIRMAN. Take the case that was presented here the other day, and I am not asking you to express any opinion upon that case, because it may come before you, but there is a line of boats on the Hudson River running from New York to Albany, now exclusive, I believe, having traffic arrangements, or without traffic arrangements, but selling through tickets on railroads, and the line being used on through tickets sold by railroads. Supposing a new line should be started there, and you are given the power to make rules over lines with connecting water carriers, and you establish a principle in some other case; wouldn't it be difficult for you to arbitrarily say in this case that these people are not entitled to through rates?

Mr. KNAPP. Not if the facts materially differ, I should have no difficulty.

The CHAIRMAN. The facts can not very materially differ. Here is a new line that may be proposed; a new line may be proposed on the Pacific coast. You say there that they must give through trans-

portation. The facts are very similar, and perhaps there is hardly any variation.

Mr. KNAPP. A proposed line is one thing, and an existing water line, such as this law contemplates, is another thing.

The CHAIRMAN. When I say "proposed line," I mean proposed as to other business; it is a new line. I should think it might be a very difficult thing to make one construction in one case and another construction in another case.

Mr. KNAPP. You anticipate difficulties in that regard which have not occurred to me.

Mr. STEVENS. Judge, the water carriers in their hearing before the committee also made another very serious complaint against this and other amendments to the interstate-commerce law so far as affecting their business is concerned, and that is that the liability of water carriers for freight that has existed since the days of Justinian, and I presume before that, is abrogated by the interstate-commerce law as it now stands; that is to say, that where their liability holds, the law is limited to the value of the vessel. Under this, and the Carmack amendment, their rivalry would be unlimited, and that would eliminate them practically from competition by rail; and that is sustained by decision, I think, in the admiralty court of New York. Do you know anything about that?

Mr. KNAPP. It has not been brought to my attention.

Mr. STEVENS. Has that point been brought to your attention?

Mr. KNAPP. Not before.

Mr. STEVENS. So that you would not care to give any expression upon it?

Mr. KNAPP. For the moment it occurs to me that that is a criticism upon the Carmack amendment, and not upon the proposed modifications of the pending bill.

The CHAIRMAN. Their position was that the Carmack amendment, taken in connection with the authority to compel them to enter upon the routes at any place, increased their liability.

Mr. STEVENS. Yes, that is the point; in other words, that you assumed at first to bring all their business within the jurisdiction of your commission; that your commission substantially changed its mind by the majority of one, and only brought their business within your jurisdiction which consisted of through routes. Now you propose, and we propose, that you be given jurisdiction of practically all of their business, which would abrogate all of the old-time rights and privileges that water carriers have had. That is the point.

Mr. KNAPP. I may be quite obtuse, but I don't exactly appreciate the point. The commission has held that where a water line unites with a rail line in handling through business, that the water line is subject to the law only to the extent to which it is under common control, management, or arrangement with the railroad company.

Mr. STEVENS. That is true; but at first you held that wherever they united in the slightest particular, that that small point of union brought all of their business within the jurisdiction of your commission. But subsequently you changed that position to the position that you have just outlined; and now they complain that we intend further to extend your jurisdiction so that practically all of their business can be brought within the jurisdiction of your commission, and within the jurisdiction of the Carmack amendment; and that that

abrogates the old rule of liability that has existed for more than a thousand years.

Mr. KNAPP. If the chairman is right in his suggestion, the decision that was made becomes the settled law of the case so far as the commission is concerned. In the second place, as a practical matter the liability, it seems to me, could never exceed the limitation which you say has existed for so long a time.

Mr. RICHARDSON. In that connection, isn't it admitted by the commission that there is no demand or necessity or reason for the regulation of water rates except where connecting with common carriers?

Mr. KNAPP. I am not prepared to say that that is the view of the commission. I have no authority to speak for the commission. That is what the commission holds under the present law.

Mr. RICHARDSON. That there is no demand or necessity for the regulation—

Mr. KNAPP. We hold that the present law does not give jurisdiction over the water line excepting to the extent that it is under common control, management, or arrangement with the railroad.

Mr. RICHARDSON. Do you think that the law ought to go further and give the commission the authority to regulate the rates over water courses?

Mr. KNAPP. I am not prepared to recommend that at the present time.

Mr. RICHARDSON. In connection with steam railroads?

Mr. KNAPP. I say I am not prepared to recommend that legislation go to that extent at present.

Mr. KENNEDY. Under existing law the initial carrier is liable for the whole damage that may occur in transit.

Mr. KNAPP. So the Carmack amendment seems to say.

Mr. KENNEDY. Suppose the initial carrier be a railroad, and the part of the joint route be over a line of steamships, and the steamship carrier goes down itself. Under existing law no recovery could be had against the steamship line.

Mr. KNAPP. Well, I hesitate to express opinions at the moment upon very difficult questions of law which the commission has now no authority to determine, and which is not proposed that it shall have authority to determine under any pending bill.

Mr. STEVENS. No; but it affects the policy of the committee and Congress in determining how far the law should be amended.

Mr. ADAMSON. Under existing law and practice water lines do not become parts of through routes except on their own motion, volition, and initiative. If they become subject to your commission, it is because they voluntarily do so; is that not true?

Mr. KNAPP. Except as we may under the present law require a water line which maintains a rail line—

Mr. ADAMSON. Yes; I understand, but that is its own; unless it connects itself with some other line.

Mr. KNAPP. A physical connection; yes.

Mr. ADAMSON. And not under the same control and management if there is a physical connection?

Mr. KNAPP. No; but under the provision in the Hepburn law, so called, which permits the commission to require connecting carriers to make through routes and joint rates, the statute says that that may be done, although one of them is a water line.

Mr. RICHARDSON. That, of course, will happen.

Mr. KNAPP. If I may answer your question further, the only instance, as I said yesterday, in which that authority has been invoked has been where the water line was petitioning to have it done, and the rail line declined to make the connection.

Mr. ADAMSON. Then it was on the application of the water line?

Mr. KNAPP. Yes, sir.

Mr. STAFFORD. The proposed amendment so far as water carriers are concerned seeks to vest jurisdiction in the commission to establish through lines whether a through line exists now with a rail line or not.

Mr. KNAPP. I don't think that that is the effect, if I understand you.

Mr. STAFFORD. I understood that the proposed amendment was to confer additional jurisdiction upon the commission to establish additional through lines by water and rail, even though a through line already existed?

Mr. KNAPP. Yes.

Mr. STAFFORD. Would that authority, if vested, confer upon the commission authority over local rates even upon a water line which was joined with the rail line in through traffic?

Mr. KNAPP. Clearly not, in my judgment.

Mr. STAFFORD. The lake carriers feared mostly the unbridled competition of some competing lines that would take away their business by establishing a cutthroat rate on local business and in conjunction with local rates on rail lines; so if it would not confer jurisdiction over the local rates on water lines, they would still be at liberty then to meet that competition that might arise from some competing water line being established.

Mr. KNAPP. If I understand you, a concrete illustration would do this: Here is a railroad line from New York to Buffalo. There is a steamboat line on the lakes to Duluth. Now the commission may require that they unite in establishing a through route and joint rates. I don't understand that that would bring the local traffic of that water line between Buffalo and Duluth under the control of the commission.

Mr. RICHARDSON. Don't you think the principal alarm that our friend just called your attention to is brought about by the fact that that proposition of the Hepburn bill was left out which says "that provided a reasonable and satisfactory through route does not exist?" Don't you think that the cause of all the alarm?

Mr. KNAPP. Apparently, from a suggestion made yesterday by a member of the committee. I had not heard of that objection before, because, as I have already twice stated, the only instance in which that authority of the commission has been invoked under the present law was where the water line was the petitioner.

Mr. RICHARDSON. I do not want to infringe upon the rule that you have laid down in regard to expressions of opinion about the law, but you do not believe that the commission ought to have the right to initiate rates, do you?

Mr. KNAPP. Not under present conditions.

Mr. RICHARDSON. Under present conditions. Well, don't you think that the provision that you advocate of extending the limit prescribed, or suggested by the President of the United States in his message, of allowing the commission not to go beyond the date where

the rate would otherwise have gone into effect more than sixty days, or the time that the commission is considering reaching its decision, of four months, is equivalent to giving the commission the power to initiate rates?

Mr. KNAPP. It is equivalent to giving the commission the power to prevent the advance in rates during that period.

Mr. RICHARDSON. But you can see that in effect it is practically giving the commission the power to initiate rates.

Mr. KNAPP. No; because the rate is already initiated and there, and has been put in by the railroad.

Mr. RICHARDSON. It has not gone into effect.

Mr. KNAPP. Oh, yes. They had a rate before they filed the new tariff.

Mr. RICHARDSON. It would make a different rate. How many railroad rates on an average probably in a year are filed before the Interstate Commerce Commission?

Mr. KNAPP. Oh, a great many thousands.

Mr. RICHARDSON. A great many thousands. Now, those rates, as I understand it, are often changed?

Mr. KNAPP. Yes; in the vast number of railroad rates the changes are quite numerous every day.

Mr. RICHARDSON. And every time that change takes place, or they propose to make a change, then the functions of the commission would come in under that clause that allows the railroad to give thirty days' notice of any change that they intend to go into effect. Then you would take charge of that and review it—would have a right to review it—up to sixty days after the date it would go into effect otherwise. Now, does not that give you the power to supervise practically every rate that is fixed by the railroad?

Mr. KNAPP. To a certain extent, of course; probably 99 per cent of those changes would not be postponed.

Mr. RICHARDSON. Not be postponed by the commission?

Mr. KNAPP. No; slight changes are going on all the while.

Mr. RICHARDSON. Judge, isn't it a fact, from your observation and knowledge of the workings of the transportation laws of the country, that the railroads—the common carriers—now frequently reduce their rates for the accommodation of the public on occasions?

Mr. KNAPP. Yes.

Mr. RICHARDSON. And everybody is allowed, whether they are going on the business of that particular occasion or not, to ride under that reduced rate. Don't you believe that this power that you ask for an extension of would in its effect make rigid the rate; there would be no such elasticity as has been going on?

Mr. KNAPP. I don't think so, and I don't see why it should be so.

Mr. RICHARDSON. Why would a railroad want to reduce a rate to accommodate the public on a certain occasion when, after it reduced it, it could not go back to the same rate again unless it gave thirty days' notice to the commission?

Mr. KNAPP. It has to now give thirty days' notice.

Mr. RICHARDSON. Then it would never change in accommodation to the public?

Mr. KNAPP. It does not happen now. The commission has made regulations under its present authority for pretty much every kind of excursion rates.

Mr. RICHARDSON. But you never have had any authority, as I understand it, when a railroad gives the thirty days required by the statute that it is going to increase a rate, to review that before it goes into effect under the present law, have you?

Mr. KNAPP. We probably haven't that authority, at least that is my opinion.

Mr. RICHARDSON. You practically have never exercised it, have you?

Mr. KNAPP. I think not.

Mr. RICHARDSON. And for that reason this bill is undertaking to make that a law?

Mr. KNAPP. No; I don't so understand it at all. It simply gives the commission authority, when complaint is made, or when by reason of its general knowledge it believes that such action ought to be taken (and the rate is advanced) the power to postpone the taking effect of that advance for sixty days more until the commission can investigate it.

Mr. RICHARDSON. But, then, this bill goes still further, as I understand it—and if I am not right I know you will correct me—and says that if at the end of that sixty days, after the rate should have gone into effect otherwise, you have not reached the decision, the rate goes into effect anyway. What is your opinion as to that?

Mr. KNAPP. For one reason, undoubtedly, to in effect require the commission to act with promptness in disposing of these questions; not suspend a rate or prevent a rate advance by the exercise of power equivalent to an injunction and then delay an investigation indefinitely.

Mr. KENNEDY. I want to ask you about the operation of section 2 of the Hepburn law. There were some decisions of the commission made with reference to import rates which I understand were reversed by the courts, were they not, under the operation of section 2, which is amended by section 2 of the Mann bill, the import rate?

Mr. KNAPP. The commission held originally, before I became a member of it, that this law, and the commission appointed to administer it, had no extraterritorial jurisdiction, and therefore an import rate less than the domestic rate from the same port was in violation of the act to regulate commerce. The Supreme Court held differently; that the law did not mean that.

Mr. KENNEDY. One of the cases was a case on a shipment from New Orleans to Dallas, Tex. Do you remember what the import and domestic rates were?

Mr. KNAPP. If you refer to the old import rate case, that case involved the difference between import and domestic rates through the port of New Orleans to interior destinations.

Mr. KENNEDY. The rate on 100 pounds of freight from a port in Germany to Dallas, Tex., as I remember, was 33 cents. The rate over the same line on the same character of goods was something like 65 cents, carrying American goods part way over the same line. The commission held that that was an unfair discrimination and, as I understand it, the Supreme Court reversed that because of the presence in section 2 of the words "under substantially similar circumstances and conditions." They reversed it on the ground that an import shipment was not "under substantially similar circumstances"



as a domestic shipment. Now, what, in your judgment, would be the operation of section 2 in the Mann bill if passed?

Mr. KNAPP. As I understand it, it is intended to prevent an import or an export rate lower than the domestic rate from or to the same port.

Mr. KENNEDY. Now, have there been many complaints come before the commission on account of these lower import rates?

Mr. KNAPP. Oh, yes; the commission has had a good many complaints.

Mr. KENNEDY. I would like to have you state for the benefit of the committee what the railroads are doing generally in that regard, if that matter has come officially to the attention of the commission?

Mr. KNAPP. Generally the import rate from a port to a given interior destination is less than the domestic rate on the same articles from the same port to the same destination, the difference varying greatly with different articles and different destinations. In some cases the difference is very slight, while in other cases it is very great.

Mr. KENNEDY. Does your commission, in considering these rates, take into consideration the competition that there is between manufacturers and producers as well as the competition between railway lines?

Mr. KNAPP. Yes; we take into consideration every fact and circumstance which has a proper bearing upon the question to be determined.

Mr. KENNEDY. Now, out of some data that I received from your secretary I learn that the railroads are making a rate now on iron ore from New York to Pittsburg \$1.20 per ton below the rate that a German would have to pay on the same imported iron ore to Pittsburg.

Mr. KNAPP. That may be the fact. I have not had occasion to examine the case.

Mr. KENNEDY. Don't you think that there ought to be vested in some commission power to correct that?

Mr. KNAPP. I do.

Mr. KENNEDY. Has your commission thought out any way in which this language in section 2 of the Hepburn bill ought to be amended in that regard?

Mr. KNAPP. Well, I am not prepared to say what the commission as a body would officially recommend in that regard.

Mr. KENNEDY. I represent a district that makes a great deal of pottery. You know about the way in which imported pottery is distributed in this country on import rates as compared with the domestic rates for distributing our pottery?

Mr. KNAPP. Well, now, that is an article which very well illustrates this whole situation, and if it be your pleasure, I would like to take a moment to discuss it.

The CHAIRMAN. It is very important and we would like to hear you.

Mr. KNAPP. Very large quantities of crockery are made in this country, in New Jersey and in the vicinity of New York, and a very large amount of crockery is imported from foreign countries. This provision in the Mann bill would prevent a road from making any lower rate on the imported crockery than it makes on the domestic crockery from the same point to the same interior destination. Now, take the Pennsylvania Railroad as one of the great lines leading out

of New York. I will assume that of the total crockery which that road carries, say to Chicago, 90 per cent of it is domestic and 10 per cent imported.

Now, suppose this bill becomes a law, what will the Pennsylvania Railroad do; what must it do? Advance its import rate to its domestic rate, because it can not afford to reduce its domestic rate to the import rate. The loss of net revenue by the reduction of its domestic rate might exceed its gross revenue or its import traffic, and it could do nothing else than advance its import rates to the domestic basis. And for another reason: Crockery is in a class with many other articles, and the rates on the different classes bear certain relations to each other. If the Pennsylvania Railroad reduces its domestic rate on crockery, there is perhaps no reason why it should not be required to reduce correspondingly upon scores of other articles. But the Canadian Pacific, leading from the port of Montreal, can reduce its domestic rate to the import rate because it has no domestic crockery to carry. The Baltimore and Ohio can reduce its domestic rate to the import rate because it has no domestic crockery to carry from the city of Baltimore. The Chesapeake and Ohio and the Norfolk and Western can reduce their domestic rates to their import rates because they have no domestic crockery to carry. The Illinois Central can reduce its domestic rate to its import rate from the port of New Orleans because it has no domestic crockery to carry, and its domestic rates are only paper rates. What is the result then? The crockery all comes in through Montreal or Baltimore or Newport News or New Orleans, and the final outcome is that you simply transfer some of the traffic from the trunk lines now carrying it from New York to the lines leading from these outports and the crockery gets into the country on exactly the same rate as now.

Mr. KENNEDY. But now, under the present régime, our great factories are lying along a set of lines that the present practice practically puts under no obligation to them in this great scheme of competition and help. Why should not the Pennsylvania road be the natural ally of factories along its line?

Mr. KNAPP. It should be.

Mr. KENNEDY. To enter into competition as an ally of theirs, with American factories in Germany and France that have other lines available for their shipments.

Mr. KNAPP. Don't misunderstand me and suppose that I am in sympathy with the present situation. I deplore it as much as you do.

Mr. KENNEDY. I hope you are not.

Mr. KNAPP. I am only suggesting that the method of correction attempted by this bill would, I think, be ineffectual.

The CHAIRMAN. Referring to the illustration that you gave. As I recall the import rate cases, about the strongest argument that was made in favor of the decision that was afterwards rendered by the court in the Illinois Central Railroad case, was that that would prevent them from doing the very thing which you say this construction would permit them to do; that is to say, if they could charge a lower rate on import goods, they could get a part of this crockery business, or other business by way of New Orleans; whereas if they charge no less than they charge on the domestic business, they would be entirely cut out of that cutthroat business which was brought by the way of

New York City and which they wished to bring by the way of New Orleans.

Mr. KNAPP. That may be; a given road, as to an article from another port than New York, might be in the same situation that I suggested the Pennsylvania would be in from New York; that it would go out of the import business by advancing the import rate to the domestic rate.

The CHAIRMAN. Don't your argument go to the question of the whole rate business for the whole United States; that is, the situation arising between two roads where one has a certain industry upon it alone and when another has not?

Mr. KNAPP. Within certain limits; yes.

Mr. KENNEDY. And the road ought to be the natural ally of factories along its line; and if foreign factories compete with them in this country they ought to be required, in my judgment, to carry the American goods as cheaply as they do the foreign.

Mr. STEVENS. Even though it confiscates the property of a railroad?

Mr. KENNEDY. It would not confiscate the property of a railroad. Would it be any loss of a profit for the railroads to carry pottery made in New Jersey and in the Middle West for the same rate that they carry the imported pottery?

Mr. KNAPP. Well, I assume that the cost to the railroad is practically the same in one case as in the other.

Mr. ADAMSON. According to your illustration a general reduction throughout the country might be entirely at the expense of the Pennsylvania Railroad Company and hurt nobody else.

Mr. KNAPP. As I said, the ultimate outcome would be that the crockery would come in through other ports than New York at the same rate it does now, and the Pennsylvania would not have any to carry.

Mr. STEVENS. In other words, our section of the Central States, the Mississippi Valley, uses a large amount of crockery and produces none. If Mr. Kennedy's argument prevailed, why would not the effect be that we would import crockery either by the way of New Orleans or by the way of the Great Lakes over the Canadian Pacific, and we would not use domestic crockery at all, or very little?

Mr. KNAPP. Well, the commercial effect you can estimate just as well as I can. I am simply speaking of the transportation effect.

Mr. STEVENS. That would be the transportation effect. The Canadian Pacific would do their business on the north, the Illinois Central and the Frisco lines would do the business on the south, instead of its coming through the trunk lines of the East.

Mr. KNAPP. That might happen.

Mr. KENNEDY. And the Pennsylvania Company would be compelled, if it wanted to get any of that crockery trade in the Middle West, to be the ally of the factories along its line in that general scheme of competition.

Mr. KNAPP. It might be such a reduction of its domestic rates as would deprive it of ability to pay dividends.

The CHAIRMAN. That is on the theory that competition between railroads is liable to drive them into bankruptcy. Don't you think that competition between railroads is rather desirable, what little we have of it?

Mr. KNAPP. But I am not saying that even under the present law we do not get some benefit from railroad competition.

Mr. KENNEDY. You do not think that the commission in this matter ought to have conferred upon it the power to make rates, and that rates ought to be made with reference to the public policy as clearly declared in our tariff bill? Railroads are now nullifying our tariff bill.

Mr. KNAPP. Not because they want to, but in a given instance because they have to or not carry the business.

Mr. KENNEDY. Ought they to be permitted to?

Mr. KNAPP. Let us see; take another illustration. When we investigated the matter these were the facts: The rate on plate glass from Boston to Chicago is 50 cents. . There is a through rate from Belgium to Chicago of 40 cents——

The CHAIRMAN. Do you think that is fair?

Mr. KNAPP. That is not the question now.

The CHAIRMAN. Yes——

Mr. KNAPP. Just one moment. Out of which the domestic carrier at the time we investigated the matter got 25 cents; and we had the manager of the domestic line before us and said: "Why do you do this?" "Well," he said, "I do not want to; it is an outrage;"—I use his own words—"but what am I going to do? There is a through rate from Belgium to Chicago by New Orleans and the Illinois Central of 35 cents. If I put up my rate on plate glass to the domestic rate it will all go through New Orleans; it won't benefit any shipper along my line to have me go out of the import business."

The CHAIRMAN. And that is the natural competition that comes from water lines. Are not the people of the country entitled to the benefit of that natural competition so that railroads may have some competition?

Mr. KNAPP. Well, Mr. Mann, it might be argued, although it is not a question for me to decide or express an opinion about, that the consumers of the country are benefited by railroad rates which in effect, in many cases, practically nullify our tariff laws.

Mr. KENNEDY. With that operation upon the part of the railroad, it would be cheaper to own a factory to supply the markets of this country from outside of the country, wouldn't it?

Mr. KNAPP. I don't know; it might be.

Mr. KENNEDY. Do you know whether or not this discrimination is going on as to all the products of the factories of New England?

Mr. KNAPP. I don't think so, as to all of them.

Mr. KENNEDY. Have you dug down into any species of traffic where it does not exist?

Mr. KNAPP. I have not been looking for it; I don't know.

Mr. KENNEDY. Now, the same thing applies to the export trade.

Mr. KNAPP. You have opened up, as you are aware, a very large question.

Mr. KENNEDY. I know it is a big question.

Mr. KNAPP. A question of public policy.

Mr. KENNEDY. As a matter of fact, foodstuffs now can be transported from the Middle West and be sold cheaper in the principal cities of Europe than they are now sold in our eastern cities, and the cost of placing them in Washington is greater than it is in Berlin, London, or Paris.

Mr. ADAMSON. I suppose that is no more remarkable than that the output of certain manufactories is sold cheaper over there.

Mr. KENNEDY. The railroad rates will permit them to be.

Mr. KNAPP. Let us look for a moment at the export situation. At the present time I think the export rate on grain to New York, say from Chicago as a typical point, is 2 cents a hundred pounds less than the domestic rate. That is approximately the difference which usually prevails between domestic and export rates on grain through the port of New York. The export rate from the Middle West and Galveston must be low enough so that added to the steamer rate from Galveston to some foreign destination, which would be more than the steamer rate from New York, will make a through rate practically the same or a little less in order to let any grain go out through Galveston.

Mr. STEVENS. And the same through Montreal?

Mr. KNAPP. Yes. Now, the export rate on grain to Galveston is only half the domestic rate to Galveston.

Mr. KENNEDY. At times like this, don't you think it would be a good thing to have vested in your commission power to stop that sort of thing? Is there any public policy at this time that would permit the railroads to be distributing foodstuffs to all the world cheaper than they are doing it at home to their own people?

Mr. KNAPP. But the railroads from Kansas City to Galveston will say, "It is no advantage, no possible advantage, to the people of Texas to have me go out of the export business."

Mr. ADAMSON. We might repeal all duties on foodstuffs to try the effect it would have for a few months.

Mr. KNAPP. And they say, "I must make this lower rate or go out of business."

Mr. STEVENS. That would be confiscation of property, and they would go into the hands of a receiver in sixty days. Another point: Have not complaints been repeatedly made to your commission that the export business on the Pacific coast to Asia has been eliminated because of the existence of the requirement of filing schedules of rates for the domestic part of the rate, and the fact that thirty days' notice is necessary to be given?

Mr. KNAPP. I think that that charge has been made, but it is not founded in fact.

Mr. STEVENS. Is not the complaint made that a tramp ship can make an agreement with a domestic line exporting cotton, or whatever it may be, and that by means of any sort of a rate, in order to get a cargo, can get the business; and that a domestic through rate should be made over, say, the Pacific Mail and the Southern Pacific?

Mr. KNAPP. The commission has simply held, and as to the correctness of its conclusion in that regard I have not the slightest doubt, that it has no jurisdiction over the ocean carriers. All it has said is, "You are free to initiate your own rates; you may make as much difference as you choose, in the first instance, between your domestic rate to a port and your export rate to that same port. All we ask is that you put in your tariff what you charge in both cases." And we have said further, "In the exercise of discretion, which we have under the sixth section of the law, we won't require you to give thirty days' notice of changes in your export rates; you may advance them on ten days' notice and reduce them on three."

Mr. STEVENS. Is that a general order, or do they have to have special permission?

Mr. KNAPP. I think we have a general order as to the Pacific coast ports. The carriers to the Atlantic ports don't have any trouble. They make their rate to the port for export, and they make their domestic rate to the port. They have no difficulty in complying with the law and our regulations. Now, the truth about it is, Mr. Stevens, that certain transcontinental lines don't want the public to know how much less they get out of business to the Orient than they get out of the same business to the Pacific coast.

Mr. STEVENS. And rather than give information, they abandoned the oriental business; that is the situation, is it?

Mr. KNAPP. That may be so; but to hold the commission responsible for it is altogether unfair.

Mr. STEVENS. No; if that situation exists, then it is not the commission who would be responsible for enforcing the law, but Congress for bringing the law into existence. That is the point, isn't it?

Mr. KNAPP. Yes.

Mr. STEVENS. If that is the situation, if it has reduced our oriental export as it has been reduced, the fault is with Congress and not with the commission.

Mr. KNAPP. I feel very confident in saying that it is not with the commission.

Mr. STEVENS. But this situation exists. The exports have been reduced tremendously; probably 60 per cent.

Mr. KNAPP. So I suppose they have through the Atlantic ports also.

Mr. STEVENS. The trade has fallen off, to the great disadvantage of this country. Our water carriers on the Pacific are not doing the business, or have gone out of business, and the claim has been made and presented to your commission, as well as to the Congress, that it is caused by the requirement to file their rates.

Mr. KENNEDY. Mr. Hill, in a magazine article not long ago, said that it would be impossible to get trade in the Orient for wheat unless they could put our wheat into China lower than it was sold at home. He remarked that the Chinese would not eat our wheat, but would continue to eat their rice. Do you think the American railroad ought to be permitted to distribute, as a distributor, this whole thing on the face of the earth? What reason exists, in good policy, why the railroads should be carrying and distributing for foreign countries cheaper than they carry and distribute at home?

Mr. KNAPP. They would answer that they don't do that unless they have to to get the business.

Mr. KENNEDY. But they would get business if they carried it to Washington; we would eat more down here if we could get it a little cheaper.

Mr. STEVENS. But transcontinental lines do not run to Washington.

Mr. ADAMSON. They made the same answer in regard to exports of manufactured articles.

The CHAIRMAN. Don't you think it intolerable to have freight shipped from Rome, say, to Chicago, by the way of New Orleans, for a less freight rate than if shipped from New York City to Chicago?

Mr. KNAPP. I do.

The CHAIRMAN. Isn't there some way by which we can remedy that condition?

Mr. KNAPP. I hesitate to advance my personal views.

The CHAIRMAN. Well, it may be that you are not representing the commission. Will you give us your personal views, then?

Mr. KNAPP. I can see only one way to deal with this problem, which is one of great magnitude and of vast importance and full of complexity. The difficulty to-day, as the railroads claim, is that they are not permitted to agree with each other and establish just and reasonable differential rates on import and export traffic to and from the various ports. I think, by the way, that import and export traffic can be differentiated, and reasons that apply to one do not apply to the other. There may be excellent economic reasons based in sound public policy for allowing export rates which are lower than domestic rates, but when it comes to such wide differences on import rates, which not only, in instances, nullify our protective tariff on the article, but subject our domestic producers to most serious competition—sometimes fatal competition—it is a very different situation.

The CHAIRMAN. In reference to nullifying the tariff, I would like to suggest to you that one of the reasons given for maintaining or increasing the tariff on some things has been that very discrimination.

Mr. KNAPP. I am perfectly willing to disclose my plans for dealing with this situation. I would give the railroads the right to agree with each other; and it all comes down at last to a question of differentials through the different ports. Personally I see no reason why the import rates through the port of New York should be less than the domestic rates. New York is the great commercial center. It is the place to which all the steamships come from all lands; it is the place to which many railroads go. It is the money market, and the great businesses of the country are largely controlled there.

Mr. ADAMSON. It is almost large enough to get along without further help, so that we might be able to give some attention to other parts of the country.

Mr. KNAPP. But the import rate through the out ports, like Baltimore, Newport News, Norfolk, Pensacola, Mobile, New Orleans, and Galveston, must be less than the domestic rate in justice to the railroads and the public alike; and it comes at last, as I say, to making a proper set of differentials, which will fairly distribute the traffic as between the different ports and the different rail carriers, and keep the rates as nearly as we can up to the level of the domestic rates.

Mr. KENNEDY. Then there ought to be somewhere vested a discretion to control that matter, ought there not?

Mr. KNAPP. Yes, I think so.

Mr. KENNEDY. All the power of the commission was taken away by the action of the courts in construing section 2 of the Hepburn law.

Mr. KNAPP. Not section 2 of the Hepburn law; the Hepburn bill did not change section 2.

Mr. KENNEDY. Section 2 of the original act?

Mr. ADAMSON. "Similar circumstances and conditions." I understand you favor retaining those words at all events, no matter which direction these bills take.

Mr. KNAPP. What I have in mind may be illustrated by the export grain situation. Grain furnishes a large volume of traffic which is handled on very narrow margins. But slight difference in the cost of moving it to the foreign destination will determine the route it takes. It has been testified to before the commission that a difference as small as one-eighth of a cent a bushel will determine whether the wheat shall be shipped through Baltimore or New York. Now, on account of the disadvantages of the outports, the comparatively infrequent number of sailings from those ports, the very small ship tonnage from those ports in comparison with New York, and the greatly less number of foreign destinations reached through those ports, the through rate must ordinarily be a little less through the outports than through New York in order to attract the business; in other words, you must balance the commercial advantages of New York by some slight transportation advantage through the other ports in order to distribute the business.

Mr. STEVENS. Right on that point, if you attempt to make a rigid rate or attempt to force an agreement with import differentials, don't you necessarily force a larger volume of imports to the north through Montreal and south through New Orleans and Galveston and larger volume of exports through the same ports, thereby increasing the number of ships and the ability of those ports and decreasing the ships and ability of the Atlantic ports accordingly?

Mr. KNAPP. That would all depend upon the differentials.

Mr. STEVENS. But how are you going to force the Canadian Pacific on the north and the Kansas City Southern or the Missouri, Kansas and Texas on the south to make differentials so that the Pennsylvania Railroad can get business? You can't do it unless you have government ownership on the one side or government guarantee on the other.

Mr. KNAPP. Or, since the Canadian road operates partly in a foreign country, we could prevent it from entering into ruinous competition with our domestic lines.

Mr. STEVENS. But you can not prevent them from sailing on the Lakes?

Mr. KNAPP. No.

Mr. STEVENS. It can not be done.

Mr. KENNEDY. But it has to get its traffic to the Lakes by passing over roads in our country?

Mr. KNAPP. Take most commercial articles, Mr. Stevens, the disability of the port of Montreal, shut up some months in the year by the ice, and for other reasons, would, I think, prevent the bulk of the traffic ever going through that port, or any inordinate share of it, if the rates through the other ports were fairly adjusted to each other. Besides, I think this is true, that the Canadian Pacific or the Grand Trunk, like our domestic roads, have many relations with each other; many things they want of each other; they have an influence upon each other in adjusting rates, and there is not the disposition to cut each other's throats all the while; and they can, if they have the authority of law, agree upon rates which probably would be fairly satisfactory to them.

The CHAIRMAN. You don't think there is any real danger of the railroads going into bankruptcy through ruinous competition, do you?

Mr. KNAPP. I hope not.



Mr. TOWNSEND. You started in to express an individual opinion, with the understanding that it is your individual opinion, and you have suggested that one remedy perhaps might be through agreement. Have you any other suggestion to make?

The CHAIRMAN. Did the agreement that you referred to have reference to an agreement merely as to the rate, or a pooling provision as to freight?

Mr. KNAPP. Rates. I have sometimes thought that if I had the power I would get all of these railroad managers together and I would say:

Here, you must agree on a fair differential basis of rates as between these different ports. If you can not agree I will fix them myself, and then you try them for six months or a year to see how they work, and you may come back here and see if they need readjustment.

In other words, I believe it is possible to maintain an import rate through the port of New York which is practically the domestic rate, and with differences through the other ports materially less than now prevail, and that I think is about all you can do, and all that is in the interest of the country that you should try to do.

Mr. KENNEDY. I made a study of import rates as compared with domestic rates on pottery, and the rate from Liverpool, England, to Chicago is substantially the same as from Liverpool on the Ohio River to Chicago and to other points on the continent. It is practically the same rate. And when you go further west the domestic rate jumps right up to the clouds, excluding our pottery from the Middle West. What was the occasion for that wonderful advance in the domestic rate beyond Chicago?

Mr. KNAPP. I do not know.

Mr. KENNEDY. Is there any reason unless it be to help the foreign factory?

Mr. KNAPP. Oh, railroads don't make rates to help foreign factories.

Mr. KENNEDY. They used to.

Mr. KNAPP. They make rates to get business.

Mr. KENNEDY. They used to discriminate between domestic producers and the pottery makers that import their pottery here from Americans in Germany and France who built their factories over there for some reason.

Mr. KNAPP. I have been led into a not very instructive talk, and all I have meant to say was, with the utmost respect, that I can not believe that the plan proposed in this bill, which creates a hard and fast rule that no export or import rate shall be less than the domestic rate, would be wise legislation.

The CHAIRMAN. When I drew that section of the bill it was not for the purpose of committing myself to the proposition involved any more than to the other provisions of the bill, but it seemed to me that it was a matter that deserved attention from the legislative body. Present conditions have become well-nigh intolerable. If we give to the commission power over these rates, wouldn't that answer the question as to the authority to make differentials, or would you, under the existing law, be required to make the same rate on domestic freight and imported freight to the same point?

Mr. KNAPP. I don't think I care to say any more than I have upon that point. It would come, of course, to giving the commission power

to fix the minimum rate. I think there is very much to be said in favor of that.

Mr. KENNEDY. Wouldn't it be a good thing to fix the minimum and to give the commission a little power, at least, and fix minimum rates?

Mr. KNAPP. I have often thought so.

Mr. KENNEDY. In the case of railroads where they compete with water carriers?

Mr. KNAPP. I am inclined to favor that suggestion.

Mr. ADAMSON. That might be disturbing something that God made, as remarked by some member of the committee a few minutes ago.

Mr. KENNEDY. The railroads have practically destroyed a utility of great importance that God made by discriminating against the traffic on the Mississippi River.

Mr. ADAMSON. To that I object.

Mr. KNAPP. It seems plain to me that it is desirable. It is in the interest of the country as a whole that this traffic, both export and import, should be distributed, and whatever plan will produce the most equitable distribution of that business as between the different lines and the different ports and at the same time restrain, so far as practicable, any unreasonable competition as the result with our domestic producers is a thing we should all want to accomplish.

Mr. KENNEDY. Do you think that thoroughgoing regulation of common carriers ought to give you power to stop destructive competition?

Mr. KNAPP. Yes; that is my personal view.

Mr. KENNEDY. The conferring upon you of power to fix minimum rates would enable you to do that, wouldn't it?

Mr. KNAPP. Apparently it would.

Mr. STEVENS. But that would establish a system of rigid rates, wouldn't it, that would be practically very hard to change in order to accommodate business conditions in the country?

Mr. KNAPP. Yes; but I understood the question as put by Mr. Kennedy to imply not the fixing of a particular figure from a given port to any interior destination, but it would work out a percentage relation or some other prescribed relation of rates as between the different ports.

Mr. STEVENS. But how could that be avoided? If you have water competition, for example, on the Lakes, which would be the basis of fixing a line to the Central West, how are you going to avoid fixing a minimum rigid rate to meet that competition?

Mr. KNAPP. Possibly you may not be able to in that particular case.

Mr. STEVENS. If you can not avoid it in that case, won't that system extend gradually?

Mr. KNAPP. It might.

Mr. STEVENS. If that is done, do you think that the people of this country will allow you to fix a system of rates below which they can not get their products carried?

Mr. KNAPP. I am only saying that there may be cases where I think it would be wise to fix a minimum rate.

Mr. KENNEDY. If we attempt at all to create that basis, then we will have to clothe somebody with discretion to act sanely in that regard.

Mr. KNAPP. It seems to come to that.

Mr. BARTLETT. I want to ask you a question that does not relate to this subject that is being discussed now. You were asked by Judge Richardson with reference to the power to originate rates, and this bill now under consideration seems to confer the power. Has the commission ever given any consideration to section 13 of the original act, which provides:

Said commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Now, has the commission ever investigated or determined whether or not they had the right to institute any inquiry on its own motion "in the same manner and to the same effect as though complaint had been made?"

Mr. KNAPP. There is no question about our very ample powers of investigation under that provision, and they have been frequently exercised. The point is that, in my opinion, certainly, and I think that is the view of most of my associates, we can not make an order under the fifteenth section in a proceeding instituted upon our own motion. We can investigate, get at all the facts, but we can not apply any remedies.

Mr. BARTLETT. That has been the construction of the commission?

Mr. KNAPP. Yes.

Mr. BARTLETT. Then the only amendment necessary, in the opinion of the commission, if it is decided to remedy that, is not to give you additional power to investigate, but power to enforce the result of the investigation?

Mr. KNAPP. Yes; as is provided in the Townsend bill.

Mr. ADAMSON. Before we leave this question, I would like to ask: In any event, as to this provision you have been talking about, you favor the conditioning clause under "substantially similar circumstances and conditions," and whether in local traffic or foreign traffic?

Mr. KNAPP. If I understand you, that is what I would do.

Mr. ADAMSON. Mr. Mann's amendment would abolish that clause in all events.

Mr. WASHBURN. Referring to section 7 of the Townsend bill, in which common carriers are allowed to make agreements touching classifications of freight and so on, we had a witness here the other day, Mr. Pierce, I think, representing one of the railroads—I think the Chicago, Rock Island and Pacific—who stated to the committee that the detail work required under this section would make it almost unworkable. He said that the meetings between the railroads were of almost daily occurrence, and that the operation of this section would break down under its own weight, and he recommended that all of the section be stricken out after the word "unlawful" line 2, page 13. I would like to inquire what your opinion would be as to that proposition, whether the detail work required under this section would make it unworkable, or need to make it unworkable. His contention was that the agreement would cover such a wide area and so many rates that it would make the mechanical work alone almost overwhelming, and that there would be a great duplication because

almost substantially all of the information would, under the existing law, be in the possession of the commission.

The CHAIRMAN. Well, if you will pardon me, his position was that they simply file an agreement to have the same rates, and that would not amount to anything, and if the agreement included the rates that would be a duplication of the tariff sheets.

Mr. KNAPP. I feel obliged to say that in all the discussions of this subject as to repealing or modifying the present section of the law, and the antitrust law as well, and providing for, in effect sanctioning, certain kinds of agreements between the railroads, this has been the first time it has been suggested to me that they could not file with us copies of their agreements after made. I have discussed this question with many railroad men many times, and I never heard that point made before, and it has been previously discussed before this committee.

Mr. TOWNSEND. You see no obstacle in the way of filing such an agreement as complies with the provision?

Mr. KNAPP. I don't in the least. I don't appreciate the force of the objection. We provide now methods under which the duplication of tariffs is very largely avoided.

The CHAIRMAN. Here was the point that he made: They have an agreement and agree simply to make the same rate—the tariff sheet makers to make out the same rate, and that would not amount to anything unless it stated the rate, according to him—whereas if you inserted the rate in the agreement that would be a duplication of tariff sheets which would have to be filed ten days before the tariff sheet itself would have to be filed.

Mr. KNAPP. I would not say so. If they file a memorandum with us that they would have the same rates between certain points, the tariff would show what those rates are.

Mr. KNOWLAND. To quote Mr. Pierce's own words:

If the railroads are authorized to make an agreement, and if they put the rates in and have the tariffs express the agreement just as fully and effectively as any other document that could be filed, where is the necessity of requiring the great burden to be imposed upon the railroad companies and the Interstate Commerce Commission of keeping superfluous documents?

Mr. STAFFORD. He was there referring to the condition that only railroads be required to furnish statements of rates. There is no necessity of requiring the railroads to post their tariffs throughout the respective stations.

Mr. WASHBURN. Right on that point, I would like to ask Mr. Knapp if it would not relieve the condition somewhat if after the word "agreement" in line 3, page 13, we were to insert these words: "In such detail as the commission may require?" And that would leave it optional with the commission to vary the requirements in a way which would relieve the railroads of any unnecessary duplication. Do you see any advantage in that?

Mr. KNAPP. I see no objection to that, Mr. Washburn. It might be well to give in that connection, if the provision should be adopted, some power to prescribe rules and regulations in relation to the matter. But I do think that the carrier should be required to file with the commission, and make a matter of record with the commission, what they have agreed to do, but how they shall do it and how the work of doing it can be simplified is quite another thing.

Mr. WASHBURN. That may be left to the commission to determine.

Mr. KNAPP. I see no reason why not, as they make tariff regulations now.

Mr. TOWNSEND. Do you think it advisable to cut out the remainder of that section?

Mr. KNAPP. That would license everything without making any record of it.

Mr. WASHBURN. But after the word "agreement" to put in "in such detail as the commission may require."

Mr. TOWNSEND. Very well.

Mr. RICHARDSON. Don't you think there are enough regulations of railroads already to insure what you are intending to do, to make fair and reasonable rates; and wouldn't you think it very well in that connection and paragraph, to stop at the word "unlawful." Just simply say, that such an agreement is not unlawful, and stop there. And haven't you got all the precautions in the Hepburn bill, and the acts that came down from 1887, to give all kinds of publicity, and to give the people notice; and would not all this other matter being attached to it complicate matters, and make it a tedious matter to find out what ought to be known?

Mr. KNAPP. I have already stated that I think if railroads could be given this right, and I think they should be, they should be required to make a record with the commission of what they have agreed to.

Mr. RICHARDSON. That does it; make them file it with the commission.

Mr. WASHBURN. I would like to ask you a question in regard to the creation of this interstate court of commerce covered by the first six sections of the bill. I understood you to express your approval, and the approval of the commission, in general terms. Am I to understand by that that you meant that if we were to have a court of commerce you approved of its creation in this way, subject to the suggestion you made, or that you and the commission are in favor of the creation of the court as an independent proposition?

Mr. KNAPP. I have presented the official statement of the commission on that subject. It would seem to me the clear inference from that statement would be that the commission does favor such a court if created in the manner suggested by our memorandum.

Mr. WASHBURN. Then may I ask you to outline briefly the reasons which have led the commission to the conclusion that the creation of this court is desirable?

Mr. KNAPP. In answer to your question I should like to be definitely understood as giving expression only of my personal views.

I regard the creation of a tribunal of this sort as highly important. There are many reasons which bring me to that conclusion. The rather fundamental reason is grounded in the fact that these are all questions of national scope and interest. They are in no sense the local and isolated questions which arise in the ordinary courts. It is important that there be one tribunal of first instance which shall pass upon all these questions so that the determination will be harmonious and consistent, and not as it is now, uncertain and conflicting in different parts of the country.

Mr. RICHARDSON. In connection with your definition, which I am interested in, I understood you to state yesterday in your testimony

that this commerce court, in its chief and principal functions, should not be allowed and does not allow such court to exercise any greater authority than the present circuit court exercises over the orders and proceedings of the commission.

Mr. KNAPP. As to jurisdiction, that is right. In the second place, Mr. Washburn, you would get real expedition. Now this is what happens. We have what is called the expediting law. The commission makes an order which the carriers are constrained to resist. They prepare and file a bill in which they ask for an injunction permanently staying that order. Then they make application for a temporary stay until the motion can be heard. Under the present law the Attorney-General may file a certificate which has the effect of requiring that at least three judges in that circuit in which the bill is filed shall get together and hear that case in the first instance. Now, they are all very busy men. Federal litigation is rapidly increasing throughout the country, and their calendars are crowded. The terms are fixed and the judges assigned to hold them in different parts of their circuits, and it is a very serious matter for judges and litigants if the judges must drop all of their business and leave the courts to which they are assigned, and get together to hear one of these cases. And delays are inevitable; they have occurred and will occur. It is not practicable to get three circuit judges together under ordinary conditions right off to hear one of these cases. They involve the examination of extremely voluminous records; for example, it was told to me that Judge McPherson stated that he spent three months on the Missouri passenger rate case. In the next place, while, as respects orders which the commission now has authority to make, the need of such a court is considerably, perhaps materially, lessened by these recent decisions of the Supreme Court, still our experience shows, and I think that is to be the experience of the future, that the greater part of those cases will not turn upon questions of judgment and discretion, but upon construction of the law, the authority of the commission, and surely not far away, the very great question of what is legal confiscation.

I had a statement prepared by our solicitor, who is a very excellent lawyer and who has lived with this law for a great many years, which comes to about this: That out of 31 cases, the most of which were filed during the last year and a half, and a majority during the last year, seeking to restrain orders of the commission, 24 of them would not have been affected by these decisions of the Supreme Court, because they were based upon construction of the statutes or the contention that the commission exceeded its jurisdiction or authority, independent of the question of judgment and discretion.

Mr. STEVENS. To put it in another way: How many cases would come within the scope defined by these decisions of the Supreme Court of the United States, and could not get into the court of commerce under the provisions of this bill here?

Mr. KNAPP. All together?

Mr. STEVENS. This court of commerce has a certain jurisdiction. The decision of the Supreme Court in the Illinois Central case defines what jurisdiction courts have over orders of your commission. How many of that class of cases that this court would have jurisdiction of, that your orders could be assailed, would have been in the court of

commerce if it had been in existence, since the passage of the Hepburn Act?

Mr. KNAPP. As I stated, I think some 31 or 32 bills have been filed restraining orders of the commission since the Hepburn Act was passed; but you will bear in mind that the commission made no very important orders of large effect upon revenues of railroads for perhaps a year or a year and a half, and not many until two years or more after the Hepburn bill was passed, so that most of these cases have been brought during the last year and a half, and, I should say, the majority in the last year.

Mr. STEVENS. I notice in your report of 1908 a statement that, I think, 17 cases had been filed up to that time assailing the orders of the commission?

Mr. KNAPP. That conforms to my statement. There are thirty-odd in all.

Mr. STEVENS. I have not examined the last report.

Mr. KNAPP. So that, as I said, about half were brought within the last year.

Mr. KENNEDY. There are some features in this bill which amplify your jurisdiction that might produce a great many more cases.

Mr. KNAPP. I was going to add: In the second place, there is a feature of this so-called Townsend bill which I certainly regard with great favor. That is section 12. I think it an admirable piece of constructive legislation. It contemplates that the question of whether the purchase of an interest in one railroad by another will be in violation of any existing law shall be adjudicated in advance and not after the event. I am very much in favor of that.

Mr. RICHARDSON. You are in favor of the general principle, not the details.

Mr. KNAPP. I don't care so much about the details. I do not hesitate to express myself as very much in favor of the legislation involving that plan. As Mr. Stevens says, I am not implying the approval of every detail of this bill. It may be open to criticism and need amendment.

Mr. RICHARDSON. But the general principle you approve?

Mr. KNAPP. Yes; that one section, or the enactment of a law involving that proposition, will give a large amount of work to the court of commerce. We read every day about schemes by which one railroad is acquiring an interest in another. It is well known that our railroad system has been built up by various forms of acquisition, and those who are interested particularly in financing such enterprises will be sure to come to this court and have a determination so that they may know whether the thing they propose to do is lawful or not. If that court says it is unlawful, it is ended right there. If that court says it is a lawful thing to do, then it enters a decree to that effect, which would have the effect of estopping the Government thereafter from attacking it as in violation of the antitrust law or any other law. It is perfectly obvious that if that plan is adopted they will avail themselves of it, and that will furnish a very large amount of work for the court, and it is work of a kind that ought to be done by one court.

It would be unfortunate, I think, for a scheme of acquisition to be presented to a judge of a court in California, say, and held to be unlawful and permanently enjoined, and a similar scheme involving the

same principles presented to a court in New York and held to be all right, for then you would have conflicting and inharmonious rulings, and you would never have the matter settled until a series of cases were taken to the Supreme Court. In other words, there are a class of questions to be presented under this twelfth section which call for prompt determination and for determination by one single tribunal, so that they shall be harmonious and consistent. And more than that, the jurisdiction of that court should be enlarged, in my judgment. For example, suggestion has been made that suits brought in federal courts to restrain orders of state commissioners should be required to be brought in this court. Now, you have in both of these bills a more or less elaborate scheme for controlling or regulating the issue of railroad securities, and while that puts certain duties and powers upon the commission, as it properly should in that regard, manifestly that is a scheme of legislation which itself is going to give rise to a great many questions; and while no jurisdiction is now given under the Townsend bill over litigation of that kind, I think it is altogether probable that it will be, as questions develop as to what the commission can do, and whether it has acted within its authority, or exceeded its authority, or made an order which any interest can attack. So, very crudely, Mr. Washburn, I have indicated some of the fundamental reasons why I think that such a court is needed and would perform a very useful function in our judicial system.

Mr. WASHBURN. I would like to ask two more questions. The first is whether, if it were not for the new duties created under this bill, for the attention of this court, you would still think the creation of the commerce court desirable?

Mr. KNAPP. Yes; I would myself.

Mr. WASHBURN. And then this other question, touching upon the adverse comment of the commission as I understood it yesterday, upon the methods of constituting this court. Would you mind amplifying along those lines why you think some other method would be better?

Mr. KNAPP. As my esteemed associate, Mr. Clements, said the other day before the Senate committee, when he was asked a similar question: "The ordinary way of constituting a court is to have the judges appointed by the President, and to give them a permanent official tenure." I do not know of any constitutional or logical reason why that could not be done by the Chief Justice as well as by the President, if it is to be done at all. But why a court that is to be made up by selection from the whole body of circuit judges, and which must be constantly changing in its personnel; what is the advantage of it?

Mr. WASHBURN. I haven't your testimony before me now; but is that your only objection to the constitution of the court as provided by this bill?

Mr. KNAPP. What the commission suggested was that the court should be composed of judges appointed thereto by the President, and to remain permanently therein.

Mr. TOWNSEND. The new bill provides that the President shall name the first five, and they shall be together on that court; and that after 1914 then they shall not be eligible to redesignation to that court by the Chief Justice until they have been off one year.

Mr. KNAPP. That is a change which approaches toward the commission's proposed amendment.



Mr. WASHBURN. I was interested in a more fundamental proposition than that. I understand that under the bill this court is to be made up of judges now in the different circuits, who are to serve for a certain length of time. My interest rather lies in asking Mr. Knapp if he is of the opinion that judges who are permanently appointed to this court will be in a position to render perhaps more valuable service than those who should be appointed to it from the circuit court by reason of the fact that their attention would be, through their tenure, directed to this particular class of questions.

Mr. KNAPP. I think that question should be answered in the affirmative.

Mr. TOWNSEND. Would you have no objection to that provision, even with your suggestion carried out, of making their tenure for life on this court, and to give the Chief Justice power to assign them to a circuit in case they were not busy with the work here?

Mr. KNAPP. No; if you are to retain the principle that this court, after it is first created, is to be made up by taking the judges from the body of circuit judges. Now, as I read your amended bill it means this: The President will appoint, by and with the advice and consent of the Senate, five additional circuit court judges, no two of whom shall be appointed from the same judicial circuit. Those five are to constitute the court of commerce, and the President will designate which one of those will serve for one, for two, for three, for four, and for five years, and after 1914 no judge can be redesignated to that court until after he has been away from it a year.

Mr. RICHARDSON. Under the revised bill?

Mr. KNAPP. Yes. This is the way it would work out: The President appoints five judges, and they make this court. At the end of the first year the designation of one man has expired, and the Chief Justice of the United States could name his successor. He could take that man, because it is before 1914, but he is not bound to take him; and he could take any circuit judge in the United States and put him on that court, and so with the next year; that is, after the court is first created, any addition to that court to take the place of a man who died or resigned, or whose first designation expired, would be from the whole body of circuit court judges, and the vacancy would not be filled thereafter by appointment by the President and confirmation of the Senate with a view to serving in that court, but the vacancy would be filled by the Chief Justice, who would have the power to select any circuit court judge from any part of the United States and put him on that court.

Mr. WASHBURN. In a word, you believe it would be better to have an independent court, the judges of which should for tenure be confined to the construction of this class of cases alone?

Mr. KNAPP. Yes; although I do favor a provision in the Townsend bill which says that if there is not work enough to keep these judges busy—

Mr. WASHBURN. That is another matter.

Mr. KNAPP. I would have the court a permanent one in its personnel. I would have judges appointed to that court by the President. Under the bill, while the court, as such, would have only this limited and exclusive jurisdiction, the judges of that court would be full circuit court judges, and would be eligible to do circuit court work in any circuit in the United States; and if there was not business

enough in this court to occupy their time, then any one or more of them could be assigned to duty wherever there was need of temporary judicial assistance.

Mr. WASHBURN. Is it your opinion that there would be business enough for this new court to keep it busy?

Mr. KNAPP. I think so; yes.

Mr. STEVENS. I would like to ask a question which approaches, fundamentally, the same lines. As I understand, from the decision of the Supreme Court in those cases defining your jurisdiction, and from the language of the reports of your commission, the orders of your commission can be assailed in two great classes of cases, the question of constitutionality and the question of jurisdiction. Now, where a rate has been made by the railroads, and contested before your commission, and your commission sets the rate aside and fixes a rate which it judges to be just and reasonable, according to circumstances, can that rate be assailed in this court of commerce as being beyond your jurisdiction on the ground that it was unreasonable, unjust, or unjustly discriminatory?

Mr. KNAPP. I think not.

Mr. STEVENS. So that the whole question of considering the questions of unreasonableness, injustice, or unjustly discriminatory rates lies with your commission?

Mr. KNAPP. I think that is exactly what the paragraph means to say, as put in this memorandum. If the commission makes an order involving the exercise of judgment and discretion, that order is not open to review by the courts unless the commission has proceeded without authority or has invaded constitutional rights—they don't say it in that explicit fashion, but I don't see how any other inference can be drawn from what they said.

Mr. STEVENS. I don't either. But I wanted to make it clear that the question of unreasonableness or injustice of a rate is not a ground of jurisdictional questioning of the orders of your commission.

Mr. KNAPP. Unless it becomes confiscatory.

Mr. STEVENS. If that be true, what is the necessity of long records or long hearings before a court of commerce in considering your orders? Isn't it a short proposition then?

Mr. KNAPP. It would be, I think, Mr. Stevens.

Mr. STEVENS. That is why I wanted that to appear of record.

Mr. KNAPP. It would be, excepting where the constitutional question is involved.

Mr. TOWNSEND. And that is involved in all of them.

Mr. KNAPP. Oh, no. If it is a mere question of jurisdiction, which amounts to the same thing—the question of whether the commission has correctly interpreted the statute—because the commission must construe the law in applying it, and the correctness of its construction may be questioned, that presents a pure question of law.

Mr. STEVENS. Which does not require any great length of time?

Mr. KNAPP. No; so that the questions involving the meaning of this law, its proper construction and the jurisdiction of the commission, would not require a long time, and could be promptly determined. But when you come to the question of whether the order operates with confiscatory effect, you have a very large question of fact to deal with.

Mr. STEVENS. Now you deal with a question of fact. Do you think that five judges drawn from five circuits as they happen to be located could deal with a question of fact to better advantage than a limited number of judges of equal ability and long experience from the locality itself? Do you not think that the judges from the locality itself could get at the question of fact to better and fairer advantage than those from a distance schooled in a place like Washington?

Mr. KNAPP. But that is a matter of opinion. It might be so in one case and it might not be so in another. There is no sort of objection—the President is not limited in his selection of judges for this court. He may appoint men who are now on the bench, and thereby, of course, create a vacancy in the court where they now serve.

Mr. STEVENS. You realize that if a circuit judge now be taken from his circuit work his place could be immediately filled by the appointment of a district judge to do that same work?

Mr. KNAPP. I suppose that is the case.

Mr. STEVENS. Certainly, and we have a superfluity of district judges and many of them do not do enough work to hardly earn their salt. We realize that.

Mr. KNAPP. I do not realize that; I don't know about it.

Mr. STEVENS. I can tell you that that is the fact.

Mr. KNAPP. It is not true in the districts with which I have some familiarity.

Mr. STEVENS. I can tell you that there are a great many districts——

Mr. KNAPP. Perhaps we misunderstand each other. I rather assumed that in many of the districts, so far as the work of the district court is concerned, it would not occupy all the time of the district judge, and that the district judge finds his principal work in the fact that he holds a circuit court.

Mr. STEVENS. Now, the circuit and district work in a great many of the districts of the United States does not require a considerable part of the time of the judge of that circuit, and I can name a great many of them, if it was necessary, and quite a number in our section.

Mr. KNAPP. I was not aware of that.

Mr. STEVENS. In a section such as the Dakotas, and in districts like Wyoming, and the small districts like that, their judges are assigned to other circuits, as a matter of course. It has been done a great many times, and I will venture that at this moment many of them are so assigned.

Mr. TOWNSEND. One circuit judge assigned another's work?

Mr. STEVENS. No; a district judge assigned to work in another district. Judge Amidon does most of his work in the same circuit, but in a different district.

Mr. KNAPP. The second circuit is composed of the States of Vermont, Connecticut, and New York. The district judge of the district of Vermont probably does more work in New York City than he does in his own State.

Mr. STEVENS. That is the point. We have so many district judges now that the work of the country is fairly well done in the circuit courts by reason of the district judges doing circuit work. Now, what is the reason the circuit judges could not do the work performed by this commission, and obviate the necessity of having an increased

number of circuit judges when we have a superfluity of district judges and their work can be interchanged?

Mr. KNAPP. You are assuming that there are many superfluous judges.

Mr. STEVENS. I think it is the fact.

Mr. KNAPP. I see you have created another one in the district of Maryland.

Mr. STEVENS. We did; and two in Ohio.

Mr. KENNEDY. And we needed them in Ohio.

Mr. STEVENS. We could lend you some.

Mr. KNAPP. I am assuming, and it must be the case, that the federal litigation is rapidly increasing. The commerce clause of the Constitution, as it is interpreted by the courts, is the most tremendously centralizing force in our political system.

Mr. TOWNSEND. There is another provision of section 5 rather in connection with this, which under the new bill provides that the Department of Justice shall have charge of cases which are now prosecuted independently by the commission; and in that section it provides that the Attorney-General, who has charge of the care of those cases, may employ counsel anywhere to assist him. Mr. Cowan was before this committee, or sent a brief, in which he contends very vigorously for the right of the shipper to appear before this court and before the Supreme Court to make arguments and file briefs, insisting that that is a right which is very dear to the shipper. What have you to say as to whether we ought to insert in the law such a provision?

Mr. KNAPP. The commission has not suggested any change in that regard.

Mr. TOWNSEND. I recognize that.

Mr. KNAPP. And I think it may be assumed, because it seems to me to be a necessary inference, that the commission is in favor of this bill, except as it recommends some changes which I have brought to the attention of the committee. The bill, as I understand it, contemplates that the Attorney-General may employ special counsel in cases. It is provided so in terms. Isn't it almost inevitable that the Attorney-General would employ the counsel who had appeared before the commission for the complainant, and the man who had made himself familiar with that case?

Mr. RICHARDSON. But, Judge, this bill forbids the attorney of the commission, who is familiar with the case, from appearing in the court of commerce or the Supreme Court.

Mr. TOWNSEND. Oh, no.

Mr. KNAPP. We are not speaking of the commission's attorney, Mr. Richardson, but the attorney who represents the complainant before the commission. The bill would not prevent the Attorney-General from employing Mr. Cowan in any case in which he had represented the complainant before the commission.

Mr. TOWNSEND. Can you see any objection to a law compelling the Attorney-General to employ any counsel who comes up here with the shipper?

Mr. KNAPP. Yes, I can see objection to a law that compels the Attorney-General to employ counsel and pay them when he don't think it is necessary.

Mr. TOWNSEND. Or permit them to take part in the conduct of cases.

Mr. KNAPP. Looking at that side of it for a moment, would not the court on application be almost certain to allow the parties directly interested to present their views? Suppose this court of commerce or the Supreme Court were hearing a case in which the complainant had been represented before the commission by outside counsel. They want to be heard in that case. The court has got unquestioned power to permit it.

Mr. KENNEDY. They generally do permit parties interested in that way.

Mr. KNAPP. I suppose it is a common practice.

Mr. KENNEDY. I have never known it to be refused unless specially interested.

Mr. KNAPP. And particularly where the Government directly or indirectly is one of the parties to the litigation, and has no direct interest in the decisions. I supposed it was a very common thing to allow the parties who were in interest to appear. You gentlemen can judge as well as I can whether there is any need of amending the law in that regard. You can judge as well as I can whether you should put in the law a provision which in effect compels a court to hear counsel when they don't think there is any need of it, and do not want to.

Mr. TOWNSEND. That is the way I look at it.

Mr. KNAPP. To compel a court to listen to any lawyer who comes there and says "I want to be heard in the interest of So-and-so."

Mr. TOWNSEND. I presume no Attorney-General would take the chance of turning down a man who has successfully conducted a case.

Mr. KNAPP. As I said, we have to trust somebody. You can not fix it all by the statute, so that nobody is going to have any judgment or discretion. You must trust somebody.

Mr. STEVENS. I have a question that has not yet been raised, and is not in the bill. In section 1 of the original interstate-commerce act, which I hand to you, there is the proviso which I read. [Reads.]

*Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

Mr. KNAPP. I should be glad to see that eliminated from the law.

Mr. STEVENS. Do you think there would be any danger to the law in doing that?

Mr. KNAPP. Absolutely none.

Mr. STEVENS. Do you think it would be of some assistance to the commission and courts in determining questions of interstate character?

Mr. KNAPP. Very likely of some assistance to the commission. To take it out would remove a limitation which might otherwise be claimed to be binding on the courts themselves.

Mr. STEVENS. Questions like demurrage, switching charges, and so forth?

Mr. KNAPP. Oh, yes; and whether the railroad is engaged in interstate commerce, etc.

Mr. KENNEDY. It is an instrument of interstate commerce whether so engaged at the time or not.

Mr. KNAPP. I should like to see it go out very much.

Mr. STAFFORD. On the question of compelling the railroads to furnish a through rate upon application of a shipper, I would like to ask whether there is any necessity, if we establish that requirement, of compelling the railroads to file their tariffs with their respective station agents along the line?

Mr. KNAPP. They have to do it now.

Mr. STAFFORD. It was represented here by the general counsel of the Rock Island system that if we make it mandatory upon the railroads to furnish the rate in advance there is no necessity of compelling them to post the tariffs at the respective stations.

Mr. KNAPP. I can not agree with that at all. The shipper should be at liberty to rely upon the posted tariff and not have to ask an agent.

Mr. STAFFORD. And not upon the ipse dixit rate furnished the shipper. Then, again, it was claimed by one of the witnesses that the same requirement, of furnishing a rate from railroad carriers, should be extended to express companies; that there is difficulty by the shippers generally in obtaining rates from express companies, and that they do not know in advance what a rate may be to some point on a line other than their own. Have you any comments to make upon that subject?

Mr. KNAPP. I see no objection to that.

Mr. STAFFORD. Though it may not be included in either of these bills, I would like to ask whether the commission has passed upon the reasonableness of express charges by express companies in cases brought before it?

Mr. KNAPP. Oh, in a number of cases.

Mr. STAFFORD. Does the commission in those cases pass upon the reasonableness, and if the rate is found to be unreasonable, order in effect a lower rate?

Mr. KNAPP. It has done so in a number of cases.

Mr. STAFFORD. Have there been many petitions brought to the attention of the commission charging that the express charges were unreasonable and exorbitant?

Mr. KNAPP. If you mean by that specific instances, I should say not relatively large. There is a more or less feeling throughout the country, as disclosed by letters that we get and by what we read in newspapers, and in other ways, that express rates generally are very high.

Mr. STAFFORD. Has there been since your service on the commission, or from your acquaintance with this subject, any general reduction in the rates charged by express companies?

Mr. KNAPP. I am not able to say. It is only under the Hepburn law that we have jurisdiction of express rates. I have been told that when we took up this matter of tariffs, which the express companies should file and post when we thought it was necessary to have some different regulations in respect to the express tariffs than those which apply to railroad tariffs, there was a pretty general revision of the express tariffs; and I have been told that that worked out a great many reductions, particularly where a package moved over the routes of more than one express company.

Mr. STAFFORD. It has been testified to here that the express companies are becoming fewer, and that certain ones are absorbing the

former companies. My attention was directed to the first case decided by the commission back in 1887, that at that time the proportion of charges that the railroads received for their share of this traffic was 40 per cent. But in the hearings that have been held on these bills it seems that the ratio has increased until the general percentage is 55 per cent. Can you say what is the reason why the railroads are exacting a larger percentage of gross receipts of the express companies than when there was more competition back in 1887?

Mr. KNAPP. I can not; I didn't know that it was a fact. I did not know what change had taken place in twenty or twenty-five years between the share which the railroad gets out of the express business then and now. I have never had any occasion to look into it. I knew in a general way that it averages at about 55 per cent now.

Mr. STAFFORD. In the decision by Commissioner Walker at that time, in 1887, he stated that the average percentage was 40 per cent, and I assume that he had some data on which to found that.

Mr. KNAPP. But I can understand that this business has developed. When it was small the express companies had to have 60 per cent of it in order to warrant maintaining express service, but as the country grew and business multiplied the railroads received larger proportions.

Mr. STAFFORD. Some members of the committee who are not present wished to interrogate you about the long and short haul clause, to ascertain definitely just what position you take in regard to it, your reference to Judge Adamson's question creating somewhat of a doubt. As I understand you, you are not favorable to the provision carried in the Mann bill compelling the railroad carriers not to charge more for the short haul than the long haul; and you believe that by reason of the geographical conditions that there must necessarily be some differentials charged, and that the commission should have some discretion in determining what the minimum rate should be.

Mr. KNAPP. The commission would not favor a hard and fast rule. It would not prohibit in every case a higher charge for the shorter distance; but, on the other hand, the situation we are in now is this: If the unusual conditions at the longer distance point are still there, then the fourth section does not apply at all; so that the fourth section is practically a dead letter.

Mr. STAFFORD. What change would you make in export rates in contradistinction to import rates? I do not know whether you brought that out. I followed you very closely as to your views on import but not on export traffic. I believe you said they could be distinguished.

Mr. KNAPP. That is an economic question, of course, and goes to a question of public policy. I have only that opinion which a fairly intelligent man might be supposed to have. It does not involve any question relating to the present law or any law that is now pending; but I mean this: We have a country of great extent, of limitless resources, with a most energetic and enterprising people; we have highly organized and efficient machinery for production, which means, or ought to mean, I think, that for some time to come we should produce more in the United States than will be consumed in the United States, and it is to our interest, therefore, to reach the markets in foreign countries. So I have less difficulty in assenting to a low rate on export as compared with the domestic rate to the same port

than I have to a very low import rate as compared with the domestic rate from the same port.

Mr. KENNEDY. It would not do any harm, Judge, if the commission were clothed with the discretionary power to fix even a minimum rate on exports. They would not exercise that discretion to hurt our people, would they?

Mr. KNAPP. They would not mean to do so.

Mr. KENNEDY. I have thought that to prevent the putting on of an export duty at a time like the present would prevent the taking of considerable foodstuffs abroad, and that might be in the line of the best public interest.

Mr. STAFFORD. Is there any provision preventing an export duty?

Mr. KNAPP. I think not. I think the only prohibition is on the States?

Mr. TOWNSEND. To my knowledge, most of the intelligent modern nations encourage exports to their utmost ability instead of trying to discourage them.

Mr. KNAPP. Yes; the German Government has gone to surprising lengths, owning or controlling railroads, in making rates on export traffic there very low, very low, in comparison with their domestic rates.

Mr. TOWNSEND. And France does the same thing.

Mr. KNAPP. Yes.

Mr. TOWNSEND. And Belgium.

Mr. KNAPP. Yes; but Germany is the most notable example.

Mr. TOWNSEND. So that instead of putting any possible restriction on the increase of foreign trade with other competing nations, they try to increase it in every possible way?

Mr. KNAPP. Yes. You have expressed better than I did my thought as to its economic effect and the public policy involved as between the export and import situation.

The CHAIRMAN. And the favoritism shown by those foreign countries is shown toward exports?

Mr. KNAPP. Exports.

Mr. RICHARDSON. I was anxious before the latter part of the examination to which you were subjected to ask you some questions in connection with the proposed commerce court—not the composition of it or the mode and manner of its formation. Please omit all that. I want to ask you about the necessity of a commerce court, so far as the public good and the full and complete beneficial effects are concerned, or in connection with rates and regulations relating to the transportation laws of the country. That is the line I want to talk to you on.

Mr. KNAPP. Well, Mr. Richardson—

Mr. RICHARDSON. You have given your opinion very freely about the different features of this commerce court, and I know you will give it to me on that subject. That is the guide to the whole thing, whether or not the necessity exists for this court, elaborate as it is in its provisions. Now, in the first place, I call your attention to this [reading from the administration bill]:

And such Assistant Attorney-General and attorneys shall have charge, under the Attorney-General's supervision and control, of the interests of the Government in all cases and proceedings in the court of commerce and in the Supreme Court of the United States upon appeal from the court of commerce. The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation.



That is the attorney of the Interstate Commerce Commission according to this bill. Is he not a trained man in his profession at law, competent and qualified? I take that for granted. Is there any reason or good reason for keeping him, with his knowledge and experience, familiar with a case that comes from the Interstate Commerce Commission to the court of appeals or the Supreme Court, from appearing in that court and giving the court the advantage of his knowledge and information? I call your attention to that one feature of the law singly and independently.

MR. KNAPP. Well, the appeal in that respect is framed on the theory that when the commission has concluded its investigations of a given case or complaint and has made an order its function is ended.

MR. RICHARDSON. I understand that about the commission, and—

MR. KNAPP. And it is not, therefore, for the commission to go into court and defend its own action.

MR. RICHARDSON. My dear sir, I did not dream of that.

MR. KNAPP. I said that is the theory of this bill.

MR. RICHARDSON. I excluded the commission from it. I do not think the commission ought to do that; but is there any reason, as a matter of propriety, why the attorney who studied the case for the Interstate Commerce Commission should be prohibited from going before the court of commerce or the Supreme Court to aid and help other attorneys or the Attorney-General in a proper communication of the facts bearing on that case?

MR. KNAPP. Personally, I see no objection to that.

MR. RICHARDSON. Would you not think it very advisable for such a man to be there?

MR. KNAPP. That might be so, too.

MR. RICHARDSON. According to what you have been expressing about trained judges this morning, that man is competent and qualified?

MR. KNAPP. Speaking for myself, I would prefer to see that sentence stricken out of the bill, so that the Attorney-General would be at liberty, if he desired or thought best to do so, to have associated with him, either before the court of commerce or in the Supreme Court, an attorney of the commission.

MR. RICHARDSON. From your observation, is it not a fact that in the States where district attorneys prosecute cases, or have charge of them, and they are carried to the supreme court of the State, the attorney-general not only welcomes but invites that district attorney to come up to the supreme court and help him?

MR. KNAPP. I do not know what the practice is.

MR. RICHARDSON. But that is good common sense?

MR. KNAPP. In the State with which I am familiar the district attorney takes it up, as a matter of course.

MR. RICHARDSON. Now, in describing and indicating the subject-matter of jurisdiction of this commerce court this revised and reformed bill of "the administration" says this (reading from the bill):

But nothing herein contained shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof which is hereby transferred to and vested in the court of commerce.

Now, as I understand that, this court of commerce exercises alone the jurisdiction that the circuit courts now have over the orders and proceedings of the Interstate Commerce Commission?

Mr. KNAPP. Yes.

Mr. RICHARDSON. Then wherein and how can there be such great benefit in the court of commerce, so far as public interests are concerned, when that court is clothed with exactly the same jurisdiction that the circuit judges now exercise over the Interstate Commerce Commission orders?

Mr. KNAPP. Expedition and uniformity.

Mr. RICHARDSON. Expedition is all it means, then, virtually?

Mr. KNAPP. No; uniformity. We have already had the experience of one circuit court construing a law one way and another circuit court construing it another way, and we do not know what it is until the Supreme Court decides that question.

Mr. RICHARDSON. Well, you are going to get several men, a set of judges, that will confer with each other, and the jurisdiction of other judges is, of course, excluded, and you get uniformity of decision and expedition. Is that all? Supreme Court makes uniformity of decisions.

Mr. KNAPP. Yes, sir. You get another thing. I will put it this way: The laws which fix the political rights of the citizen may be different in different States, without any great trouble, and perhaps to advantage; as, for example, when a man becomes of age, the qualifications of a voter, whether offices shall be filled by appointment or election; generally speaking, all those laws which fix the political rights and relations of the citizen may be different in different States, without objection and perhaps to advantage. So, too, the laws relating to property, to contract relations, and the devolution of property upon death, may be different in different States, without great difficulty and perhaps to advantage; as, for instance, rates of interest and a thousand and one things. But when you come into this court of commerce the state line disappears and the individual interest, which is always paramount in ordinary litigation, disappears. It is a question not only of public interest, but of unlimited public interest. It is in every sense a national question. That is my fundamental reason for favoring a national court to pass upon it.

Mr. RICHARDSON. As I understand it, this commerce court has a right to meet anywhere outside of Washington, according to the interests of the public?

Mr. KNAPP. Yes, sir; it might sit in New Orleans or San Francisco, or—

Mr. RICHARDSON. Suppose this commerce court were to meet in the State of Massachusetts; it would adopt or be governed by the same practice and rules governing the circuit courts of the United States holding their sessions in different States; that is, the circuit court complies with the laws of the State, as nearly as it can, not incompatible with the statutes of the United States?

Mr. KNAPP. I believe that is the rule.

Mr. RICHARDSON. That same rule would be applied to this court of commerce if it should hold one of its sessions in the State of Massachusetts or any other State in the Union.

Mr. KNAPP. Assuming that that is so.

Mr. RICHARDSON. Then, all that we can get out of this creation of different attorneys and assistant attorneys, so far as the public good is concerned, is the uniformity of law and expedition?

Mr. KNAPP. Yes; and you avoid putting a great burden upon federal courts, which, in some instances, I know they regard as intolerable.

The CHAIRMAN. The committee is very much obliged to you.

**STATEMENT OF HON. EDWARD L. TAYLOR, JR., A REPRESENTATIVE FROM THE STATE OF OHIO.**

Mr. TAYLOR. Mr. Chairman and gentlemen of the committee, I recognize that you are very busy, and if I did not think that the seemingly little matter about which I appear before you was important, indeed, for your consideration, I would not, of course, take up your time.

I have introduced House bill No. 3084. It is simply an amendment; in fact, there is one word, possibly two words, changed in paragraph 4 of section 1 of the rate bill. The word proposed is on the third page, line 17—

The CHAIRMAN. What is the word?

Mr. TAYLOR. The word is "died." It is changing the paragraph of the rate bill as amended last year.

Mr. ADAMSON. Which paragraph?

Mr. TAYLOR. Paragraph 4 of section 1, the paragraph affecting free transportation, and changing the language as amended last year to not only include families of employees "killed" in the service, but families of employees who "died" in the service.

When the bill was first passed that was entirely overlooked. For many years the railroad companies—and I know this from men prominent in railroad circles—had always made it a custom, in proper and meritorious cases where an old and faithful employee had died to extend the pass privilege to his family.

Mr. BARTLETT. Indefinitely?

Mr. TAYLOR. Whenever they felt like it. There is, of course, nothing that compels them to do it. But in meritorious cases and when the railroad desired to extend the privilege and the families wanted to get it. At present this is prevented by law and is made a criminal act.

Mr. BARTLETT. You misunderstood my question. Do you mean at any time?

Mr. TAYLOR. Oh, yes; at any time that they wanted it. Of course, at that time there was no restriction upon passes at all; they got as many as they wanted.

The first time the matter was called to my attention was just after Congress adjourned and the Hepburn bill had become a law. Mr. R. E. McCarty, general superintendent of the Pennsylvania Railroad lines, with headquarters at Columbus, Ohio, my home city, came to me very much worried about what he claimed was a thing affecting the esprit de corps of his immediate organization. He said that he found himself face to face with a number of requests of people who stood very high among the membership of the various railroad orders and who had formerly received transportation because they were

widows or children of men who had been of long service with the railroad; but he found himself unable to accommodate them, and there was therefore some feeling being engendered. I investigated that matter and found that it was true, and quite a number of men, various trainmen of the various orders, called upon me at my office, assuring me that both the company and the employees felt that this sentimental courtesy should be continued, and that it should not be stopped.

The CHAIRMAN. The language of the present act is "also the families of persons killed."

Mr. TAYLOR. I change it to "died."

The CHAIRMAN. Now, what is the change you propose?

Mr. TAYLOR. To take out the word "killed" and put in the word "died," so that it will include the families of employees who died in the service.

The CHAIRMAN. But of course that is not all. You would make it read, "also the families of persons who died while in the service?"

Mr. TAYLOR. That seems to be the language—yes, "who died while in the service."

The CHAIRMAN. Then it is not sufficient to strike out the word "killed" and insert the word "died." You leave in the word "killed?"

Mr. TAYLOR. I didn't leave it in, but I am perfectly willing to put it in.

The CHAIRMAN. It should read, then, "also the families of persons who died," and so forth.

Mr. TAYLOR. A year or two ago, as the result of this agitation, there came from the Senate an amendment, offered by Senator Clapp, and that amendment, instead of using general terms and taking in the families of all deceased employees who died in the service, simply provided that families of employees who were killed in the service might receive the courtesy of a pass, and that is the language the chairman has just read; in other words, it brought in a certain class of families of deceased employees, and not all of them generally. By this language, if I am correct in my language, I seek to simply generalize the families of deceased employees who died in the service and give the companies the right, if they care to extend the pass privilege, to grant such passes.

The CHAIRMAN. Has there been any construction of the law as to the family of a dead person?

Mr. TAYLOR. I would not have any trouble in ascertaining that.

The CHAIRMAN. What would you say was the definition?

Mr. TAYLOR. His wife, his widow, if she survived him, and any children that might survive.

The CHAIRMAN. Until they got to be 80 years of age?

Mr. TAYLOR. It makes no difference if the railroad company cared to extend the privilege under those circumstances. This is not a mandatory rule; we are not forcing something upon the railroads.

The CHAIRMAN. But a child 80 years old would be a member of the family.

Mr. TAYLOR. Yes; I should say he was.

Mr. ADAMSON. Dependent relatives, living in the family.

MR. TAYLOR. Yes, sir. I would possibly consider my brother a member of my immediate family, if he lived with me and if I were supporting him.

MR. RICHARDSON. And if he died, his children would become members of the family, and that of course would make it indefinite.

MR. TAYLOR. I know that it does not, excepting as to the fact that the railroad companies may offer this to the family of a man as a courtesy, but a railroad may say that they will not issue it at all.

MR. STEVENS. Wasn't it that very thing that the antipass law was enacted for, to stop the courtesy business?

MR. TAYLOR. No; I don't think so. There were very many serious objections to the antipass law, but I would not attempt to give them in detail. No one ever claimed that it was unwise to give a wife or widow of a deceased employee of a railroad, a man of faithful service and long standing, a pass to ride to and from her home; to go upon Memorial Day to put flowers upon his grave, or something of that kind. And I want to say that there is a deep underlying sentiment among the men that this courtesy ought to be extended, and it is also sought by the managements of the roads.

MR. STEVENS. You realize that we are enacting a law for the government of a public corporation performing public functions for the benefit of the public; and when we make a general law preventing discrimination as to all classes of the public, in what way should this class of the public have a favor given them, and discriminate against other classes of the public? That is the point that comes to us.

MR. TAYLOR. It is part and parcel of the railroad man's every day life, and that which he appreciates and expects during his life, or during the term of his employment, to receive from the railroad company for which he is working, for himself and his family, free transportation at certain intervals. That same feeling always remains with the immediate family of that man after he has severed his connection by reason of death. It is because of that feeling that they have a right to a pass if they want to take a trip every once in a while. It has been the custom of years, and the esprit de corps of the railway organization demands it, on the part of the company. It is not the immediate family that is worrying the company, but the men who are still living and working for the company, feeling that the widow or the children of some man that they all knew, and who has died, ought to have this courtesy. As I have stated, it is purely a sentimental consideration and is not a question of logic. I have read this pass amendment, and if you can show me much logic in any of it I would be very glad indeed to see it.

MR. KENNEDY. I think your amendment ought to be made; that is, I think if we allow the word "killed" to remain, it follows, to me, that a man who has conducted the service of the company successfully without accident ought to stand higher than a man who is killed. But here is a suggestion that I think ought to be made, or a limitation that ought to be made, so that a son, say, of a railroad man, if he might happen to be a traveling man, could not——

MR. TOWNSEND. Or a Member of Congress.

MR. KENNEDY. No; but if he was engaged in commerce, it would be tremendously advantageous if he should have a pass.

MR. TAYLOR. I do not object to any limitation, but at the same time I did not consider it.

Mr. SIMS. It might be made to cover the widow during widowhood, and the children during minority.

Mr. TAYLOR. That would suit me exactly.

Mr. ADAMSON. You spoke of this relieving the officials of embarrassment. Don't you think that it would relieve them of great embarrassment and enable them to reduce passenger fares to the entire public if we were to repeal all of these exceptions to that anti-pass provision?

Mr. TAYLOR. No; I do not agree with you at all upon that.

I am very much obliged to you.

(Thereupon, at 1.10 p. m. the committee adjourned until Monday, February 21, 1910, at 10 o'clock a. m.)











# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XXII

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

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WILLIAM RICHARDSON, ALABAMA.

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GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Monday, February 21, 1910.*

The committee this day met at 10 a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. There may be introduced into the record a letter from Mr. S. H. Cowan, representing the Cattle Raisers' Association of Texas.

(Following is the letter referred to:)

[Cattle Raisers' Association of Texas.]

FORT WORTH, TEX., *February 17, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: I hesitate to further tax your time and patience, but at the risk of doing so write these suggestions to each member of your committee, because I feel that no member of the committee desires to do anything which will work, or may work, injustice to shippers or railroads.

That part of the Townsend bill which declares that "the Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation" will probably work so unjustly in the cattle rate case which I cited in my argument filed with the committee, and probably in other cases, that I feel it my duty to point it out. That case is pending before the master in chancery at St. Louis; the evidence, briefs, and arguments are all in; and it is expected that he will make a report to the United States circuit court any time.

I am acting as special attorney, employed by the commission in the case and under appointment of the Attorney-General, and Mr. P. J. Farrell, an attorney regularly in the employ of the commission, is with me in the case, and he likewise has an appointment from the Attorney-General. I have spent more than a full year's time altogether on the case before the commission and the court. It covers a great field of detail, and can not be decided properly without considering the facts in detail. It is not egotism to say that no other lawyer knows the case, nor is it a criticism to say that no other lawyer can familiarize himself with it so as to properly handle it in less than three months. If you doubt that, please send for Mr. Farrell, who is in the commission's office, and get him to tell you about it. Now, when the master makes his report the case will come on for a hearing on objections to the master's report before at least three of the circuit judges holding the circuit court.

Suppose this bill becomes a law during the pendency of the case. This clause to which I object, it seems to me, prohibits the Attorney-General from employing either one of us as special attorney in the case, and probably prevents either of us from appearing. The Attorney-General must construe it to be the policy of the law to prohibit him from employing any attorney who has represented the commission in the case. The Cattle Shippers and the Cattle Raisers'

Association, complainant, which has spent many thousands of dollars in the case before the commission, have no right to appear by counsel and thus, right in the middle of this important case, involving already, according to the allegation of the railroads, \$2,000,000, and as a precedent involving ultimately five times that amount—as I can fairly demonstrate—it is proposed in this bill to exclude me and my clients from this case. In the name of even-handed justice for the shippers of this country and as well for the bar, I want to register this protest against that which, as I interpret it, would prohibit my going on with the case in the circuit court or the Supreme Court, and prohibit attorneys of the Interstate Commerce Commission familiar with a given case from being retained or to appear. And I wish in the same behalf to enter the earnest plea that the shippers who were complainants before the commission shall have the right to appear by counsel in any court in any case where the order of the commission is attacked, in support of the order, under such rules as the court may prescribe.

I know a certain case where certain parties having rights, as they conceive, by contract will attempt to enjoin the railroads from obeying the commission's order if made. I know of other shippers equally interested on the other side. Shall they not be accorded the right to be represented? There can be no fear that such appearance will prevent the Attorney-General having control of the case, as the court can prescribe the rules to suit the case, as its conduct is necessary; but the bill can be made to read that the Attorney-General shall have control and direct the case, and that will meet the objection that he would be interfered with.

I notice the expression by some of the committee in report of hearings that they can not conceive that in such a case as the cattle-rate case the Attorney-General would not retain the counsel familiar with it. Why, then, should the bill expressly exclude the commission's attorneys? After having provided in the bill that the Attorney-General shall have charge and control, what effect can the clause to which I object have unless that which I have pointed out?

I trust you will not consider what I now say, or have said, a criticism of the authors of the bill or of the Attorney-General's department. There is no man in Congress for whom I have a higher regard, or who to my knowledge has worked more faithfully or intelligently for the best interests of the public than Mr. Townsend, nor do I question that those concerned in drawing the bill are less faithful to the public trust, but it does seem to me that there has been no sufficient, comprehensive, accurate, and detailed survey of the results to flow from it in practical operation, and as it will apply to the real parties at interest.

I realize that my opposition to it might afford the occasion for the Attorney-General to decline to continue my service in that case if the bill becomes a law while it is pending, even if the clause to which I here object were eliminated, but the interests of my clients and those similarly situated as the cattle shippers are as great in this case as that of the railroads, and I can not, in duty to my clients, sit quietly by and not protest against so manifest injustice as would result from an act of Congress retiring their counsel while the railroad's counsel continue in the case to the end. I am certain that no member of the committee intends such consequence.

While I believe that the Government should pay for defending the commission's orders, I believe that throughout the country those who have taken the burden of presenting their cases to the commission desire the right, to be exercised wherever they think it to be to their interest, to be heard when the final test comes in court as to whether they shall have and enjoy the fruits of their victory, the benefits flowing from the orders made in their behalf.

Should the Interstate Commerce Commission under the existing law, or the Attorney-General under this bill if enacted, not see fit to employ such counsel as had successfully handled a case before the commission, or deem it unnecessary to employ special counsel at all, as would generally be the case, the complainant should still have the same right to fight for his rights before the courts to the same extent as he did before the commission, subject to the case being in control of the Attorney-General. It would be availed of only in cases of great importance, and I can not see why it should be objected to if the Attorney-General is left in control of the case. The failure to provide for it would be an undue preference for the railroads.

Respectfully submitted.

S. H. COWAN.

Also a letter from Mr. Edward F. Murray, of Murray's Line, Albany, N. Y., in relation to water-line carriers.

Following is the letter referred to:

MURRAY'S LINE,  
Troy, N. Y., February 19, 1910.

*To the honorable the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C.*

GENTLEMEN: On looking over H. R. bill 17536 my attention is attracted to lines 24 and 25, page 18, and lines 1 to 7, inclusive, page 19, which read as follows:

"And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini and would form part of such through route, unless the route by way of such last-described line of railroad is unreasonably long as compared with such proposed through route."

If the intent of the paragraph is, as I read it, to restrict the operation of the proposed amendment to nothing less than substantially the entire length of a railroad, there will be, in my mind, but little use in passing the proposed amendments to the law, or spending much money in improving the waterways of this country.

As an illustration: The Illinois Central Railway substantially parallels the Mississippi River from St. Louis to New Orleans, and between those points are the following—and many other prominent places, located both on the railroad and the river—namely, Cairo, Memphis, Vicksburg, Natchez, Baton Rouge, etc.

If the proposed amendment is as it appears to me, the court of commerce could not compel the railroad company to make through or joint rates or proper divisions of same between any of these points and points beyond and the water lines, one terminus being New Orleans, but I do not know what the other terminus would be in this case.

Another illustration in this vicinity: The New York Central Railroad owns and operates a through line between New York City and Ogdensburg, N. Y., going through Vermont via Rutland, Burlington, etc., which brings it under the jurisdiction of the Interstate Commerce Commission. On the line of the road and competitive with water transportation are the cities of Newburgh, Poughkeepsie, Kingston, Hudson, Albany, Troy, Burlington, etc.

If I understand the proposed amendment correctly, the court of commerce would have no right to order the New York Central Railroad to put in effect through or joint rates, with proper divisions of same, between any of these places and the places on their roads or connections, and the water lines operating on the Hudson River and Lake Champlain, and they would virtually have no competition from water lines, except on port-to-port business.

I believe substantially the same conditions exist in hundreds of other places in this country.

If the proposed amendments are to be of any benefit to the business interests of this country or to assist in the development of our waterways, I believe that it is necessary that there should be some power or authority to compel the railroads of this country to put in force joint and through rates, with proper pro rata divisions of same, to apply between all stations with water transportation carriers.

Railroads should not be permitted to charge carriers by water any more for carrying the same classes of freight the same distance than they charge their most favored connection or patron. And if it can be legally and equitably provided, where water transportation and railroads come together, and there are no proper transfer facilities between them and the business will warrant it, there should be some power or authority to compel that proper transfer facilities be erected and a charge made to the property transferred that will fairly reimburse the parties or party who builds the transfer accommodations.

As I said to your committee, it is to my mind almost useless for the United States Government to spend hundreds of millions of dollars in improving the waterways of this country if there is not some power or authority to compel the railroads to join in through or joint rates and fair divisions of same at all points where water and rail connections are or can be made.

It is not possible, except between very few places in this country, to maintain all-water routes with proper facilities with port-to-port business only.

The railroads should act as feeders and distributors to the water carriers, and vice versa, thereby giving to the manufacturing and business interests of this country the benefit of the lowest rates that can be made to and from all points.

If I can be of any use to your committee, I am at your service, and will appear before your committee at any time that will suit your convenience. I believe that this question in all its bearings is one of the most important that has been before Congress in many years.

Thanking you for your consideration, I am,

Respectfully, yours,

EDW. F. MURRAY.

Also a letter from Mr. R. C. Adams, addressed to Representative Martin, of South Dakota, in relation to oil pipe lines, and so forth, as related to the proposed legislation.

Following is the letter referred to:

WASHINGTON, D. C., December 20, 1909.

HON. E. W. MARTIN,

*House of Representatives, City:*

SIR: I recently noticed in the Associated Press report a synopsis of the recommendations the President and the Department of Justice have agreed upon with reference to requesting legislation by Congress creating a court to which appeals could be taken from the decisions rendered by the Interstate Commerce Commission. It was also stated that special legislation would be requested which would give the commission a broader and more definite scope of authority in handling matters pertaining to interstate commerce and the regulation of freight-rate schedules proposed to be adopted by the railroads of the country.

This proposed action is very good so far as it goes, but it occurs to me as a producer of oils that two very important matters have been overlooked by the President and the Department of Justice, namely:

(1) The Interstate Commerce Commission should be given power to compel all railroads to furnish tank cars for the transportation of both crude and refined oils and the right to regulate the rate to be charged for such transportation.

(2) The proposed laws should declare all pipe lines used for transporting oil (crude or refined) to be common carriers in the same sense and for the same reason that railroads are made so.

Both of these propositions should be placed under the jurisdiction of the Interstate Commerce Commission for the same reason that railroad rates are, and the commission should be given power to regulate the rate to be charged for transporting oils by the pipe lines as well as the railroads.

Objection might be raised to the suggestion that the railroads be compelled to furnish tank cars for transporting crude or refined oils, on the ground that those engaged in the business of producing and refining oils have heretofore provided their own tank cars or pipe lines owning the same.

In a measure this is true, but it is well known that these cars are the property of the Standard Oil Company, or some of its subsidiary companies, and that this company has practically controlled the oil markets of this and many foreign countries and, by controlling the means of transportation, has to this time successfully prevented independent companies and individuals from operating to any considerable extent.

As to the question of regulating the rates on pipe lines and making them common carriers, it is well known that the producing of crude oils and refining the same is to-day one of the largest, if not actually the largest, industry of the United States; that more people are interested, either directly or indirectly, in the producing and refining of oil than in any other industry in this country; and proper means of transportation should be furnished for transporting oils of all kinds, the same as for other commodities. There are at this time pipe lines running through many of the Middle and Eastern States supposedly owned by different companies, but none have ever been known to do a common-carrier business. What is known as the "Mid-Continent oil fields," comprising middle, west, and south, is crossed at present by three pipe lines—one supposed to be owned by the Prairie Oil and Gas Company, running through Oklahoma and Kansas in a northeasterly direction and connecting with the Standard's eastern lines; one by the Texas Pipe Line Company, crossing Oklahoma and Texas, reaching the Gulf of Mexico by way of Port Arthur; one by the Gulf Pipe Line Company, crossing Oklahoma and Texas through the Beaumont fields to the Gulf. A fourth line has been incorporated under the laws of Oklahoma as a



common carrier. This is known as the Oklahoma Pipe Line Company and is owned by the Standard Oil interest. This line will cross Oklahoma, Arkansas, and Louisiana, reaching the Gulf of Mexico at Baton Rouge. These three lines all reach tide water at the Gulf, and from there the oil goes to various parts of this country and to foreign countries by the cheap water transportation.

The well-known fact that 60 per cent of the oil produced in the United States goes to foreign countries every year explains the reason why the pipe lines in every instance go to tide water.

So far as the common-carrier principle is concerned, the arrangement at present is a mere mockery. The several States do not have uniform legislation affecting the transportation question, and hence it is impossible for an independent company or individuals who produce oil to force the pipe lines to transport their products from one State to another, and unless the railroads are compelled to furnish proper tank cars for the transportation of oil, both crude and refined, it will be utterly impossible in the future as in the past for any independent producer to reach any of the markets of the United States with his oils or get them to tide water where they can be distributed by boat.

At present, and it has always been so, the independent producer by reason of this fact is either compelled to quit producing oil and go out of business or sell to the pipe-line interests, and hundreds of thousands of people to-day stand face to face with this question—the value of their product being just what the pipe lines (Standard Oil) are willing to pay for it.

There is but one relief, and that is for Congress to declare pipe lines to be common carriers in every sense of the word; compel the railroads to furnish tank cars for transporting crude oil and all its products, and provide a heavy penalty (both civil and criminal) for every violation of the law, and give the Interstate Commerce Commission power to make rates and regulate the business generally in so far as it relates to the transportation question.

I have been engaged in the business of producing oil for a number of years past in the mid-continent field; but have never yet been able to find a market for my products except such as the Standard Oil interests have voluntarily offered to give me, and to-day they are purchasing oil from me at 35 cents per barrel, which, it is well known, nets them in the refined state from \$10 to \$14 per barrel.

I can see no reason why Congress should allow the oil industry to pass unnoticed while the Department of Justice is exerting every effort to dissolve the Oil trust, which has openly boasted time and again that its system of doing business is more efficient than that of the Government itself.

The statistics furnished by the Government show that this industry has been constantly increasing since the civil war to the present time, and it is not surpassed by any other in the United States to-day. It is also a well-known fact that not more than half a dozen of the Eastern States have been fully developed with reference to the production of their oils. I may say the industry is to-day yet in its infancy, and when we stop to consider test drilling made in the States of South Dakota, southern Montana, Wyoming, Utah, Colorado, Nevada, and California have demonstrated conclusively that oil abounds in great quantities it becomes very plain to any observing person that these questions relating to the methods of transportation should be settled for all time to come as soon as possible. It is impossible at present for the owners of properties in the States I have just mentioned to operate the same or find a market for any of their products, yet it is a little strange that people residing in those States engaged in other lines of business, live stock or mining, find it possible to get their products transported to any part of the country, while the owners of oil properties enjoy no such transportation facilities. If Congress should enact the legislation proposed herein, it would be possible for the owners of properties in these several States to develop their properties, produce the oil, and reach the markets of their own and adjoining States, whereas at present they can not do this for lack of transportation facilities, and the people of these States are forced to use oil and pay transportation charges covering the same shipped from the Atlantic coast and the Gulf of Mexico.

There is no reason why the oil industry in one State should be allowed to remain in an undeveloped condition while the oil regions of some of the other States are being overtaxed and their product fast diminishing, in order to get oil to supply the people of the States with the same, when these people have enough oil within the borders of their own State to meet all demands. The industry and legislation affecting the same should be such that it would be possible for the owners of oil-producing properties, adjacent to any railroad, to

develop the same and know that their products would be transported to various points of market by the railroads the same as any other commodity produced in that locality.

I am writing this letter to you trusting that it contains information with reference to this subject with which you have not heretofore been familiar, and hoping that you may be able to bring about the enactment of some legislation that will cover the ground fully and give the investing public the positive protection to which it is entitled.

Yours, very truly,

R. C. ADAMS,  
*Bond Building.*

Also a letter from Mr. Leonard Bronson, manager of the National Lumber Manufacturers' Association, in relation to certain amendments proposed by him upon the subject of car stakes.

Following is the letter referred to:

[The National Lumber Manufacturers' Association.]

CHICAGO, ILL., *February 18, 1910.*

Hon. JAMES R. MANN,

*House of Representatives, Washington, D. C.*

DEAR SIR: Please allow me briefly to remind you of a matter of interest to the people I represent, and which was the subject of the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives on January 26 and 27.

The lumbermen do not feel that they are selfish in asking that when amendment of the interstate-commerce law is reported it be so worded as to require complete equipment of flat or gondola cars for the carriage of their products, because, as they believe, every other commodity of anything like equal importance with theirs from the transportation standpoint is given equipment especially designed to its needs.

As I stated during the hearing, I am not a lawyer, and so may make suggestions that are not entirely apropos nor readily put into words, but it seems to me that a fair and comprehensive inclusion of this matter in the law might be accomplished in substantially the following way:

In section 1 of the act as it stands to-day, in the second paragraph, is a definition of the term "transportation," reading: "The term 'transportation' shall include cars and other vehicles and all instrumentalities of shipment or carriage," etc. If you should insert after the word "cars," or after the word "vehicles," the words "completely equipped for the safe carriage and protection of all commodities ordinarily transported in carload lots," it would, I think, substantially cover the point at issue and be fair to all classes of shippers. The exact wording to cover the purpose and thought I have is very gladly left to you.

You are aware of our feeling that the railroads can well afford to furnish car stakes, binders, etc., in view of the fact that by their use they are able to transport a larger load on a cheaper car than where a box car is used.

It would seem to the layman, in view of the verbiage that follows the part I quoted above, that this broadening of the definition of the term "transportation" should be unnecessary. Seemingly, it would be covered by the words "all services in connection with the receipt, delivery," etc., yet the Interstate Commerce Commission has not seen fit so to interpret these words or to apply such an interpretation, and, therefore, I believe it is necessary that this interpretation, if it be sound, be written into the law.

I do not know whether such an addition as I suggest should absolutely require the railroads to furnish the equipment or whether they could simply pay for the equipment if furnished by someone else. The latter, if permitted, would undoubtedly be the way in which the matter would be handled at first, though I am sure that after the railroads had equipped a few hundred thousand flat and gondola cars with temporary stakes and binders they would soon devise some permanent arrangement, and be glad to do so; but perhaps it would be necessary to cover this point in the law—perhaps in the sections defining the duties of the Interstate Commerce Commission. If the railroads have the option of furnishing the equipment or paying for it, and choose the latter, the charge allowed should be absolutely fixed by the Interstate Commerce Commission, either by an allowance in the rate per 100 pounds or by a fixed allowance on each carload. Some lumbermen think that reduction of 1 to 1½ cents per

100 pounds in the rate on forest products shipped on open cars would be a satisfactory way of settling the matter. I do not agree with that view, but am willing to leave it to the wisdom of the Interstate Commerce Commission, the only point on which I am insistent being that the rate or allowance, or whatever it may be called, be fixed and published by the Interstate Commerce Commission as its investigations may determine to be just.

If you can again call this matter to the attention of the committee and secure the incorporation of this idea in the committee's reported bill you will be doing a service to several of the leading industries of the country, and at the same time, I believe, be doing no injustice to the railroads, but simply be placing upon them a duty which is properly theirs. The exact wording and form of the amendment desired I am glad to leave to the wisdom of yourself and the other gentlemen of the committee.

I am writing this letter also to Hon. F. C. Stevens, of the committee.

Very respectfully, yours,

LEONARD BRONSON, *Manager.*

Also, a letter from Mr. George F. Mead, of Boston, Mass., who appeared before the committee in relation to the bill-of-lading bill and propositions pertaining to that subject.

Following is the letter referred to:

[J. D. Mead & Co., produce and commission merchants, members National League of Commission Merchants of the United States.]

BOSTON, MASS., *February 18, 1910.*

Hon. C. G. WASHBURN,  
*Washington, D. C.*

DEAR SIR: Referring to House bill 17267, relating to bills of lading, there is one provision which should be changed so far as it relates to order bills of lading. In the amended bill which I left with you when in Washington, you will notice in the proviso to section 4 that order and straight bills of lading bearing the notation "Shipper's load and count" are exempt from the provisions of that section. This would work inestimable hardship upon the shippers of perishable goods, as the railroads would be sure to put this stamp on all bills of lading for perishable commodities, hoping to escape liability in that way. It would be inconsistent enough to put this on "order bills," for when a buyer or bank advances money on an "order B/L" and it becomes for all intents and purposes a negotiable instrument, they have a right to hold the railroad responsible for the number of packages called for in the bill of lading.

I believe you will readily see the fairness of this claim, and I hope you will vote to strike "order bills of lading" out of the proviso in section 4.

I am mailing you to-day a copy of a brief prepared by the car lines committee of our league in support of a separate form of bill of lading for perishable products, and on page 4 of this you will find substantial and, I trust, convincing reasons for our asking that this change be made.

You are so busy with hearings, I presume, it will be some time before you can consider this bill in committee.

Sincerely, yours,

GEO. F. MEAD.

P. S.—Finding that I have but one copy left of the above-mentioned brief, I am mailing this to Mr. Stevens, who introduced the bill and who will no doubt be pleased to furnish same for your information.

Also, a telegram from Mr. Homer A. Stillwell, of the Chicago Association of Commerce, concerning commercial travelers' sample baggage, etc.

Following is the telegram referred to:

CHICAGO, ILL., *15.*

Hon. JAMES R. MANN,  
*House of Representatives,*  
*Washington, D. C.:*

The Chicago Association of Commerce most emphatically indorses House bill 16019—the Coudrey bill—providing for legalization of commercial travelers' sample baggage, and strongly urges its enactment into law.

HOMER A. STILLWELL.

**STATEMENT OF HON. JUDSON C. CLEMENTS, MEMBER OF THE  
INTERSTATE COMMERCE COMMISSION.**

Mr. CLEMENTS. Mr. Chairman and gentlemen of the committee, the occasion of my coming here last week was at the request of the chairman of the commission, he having been delegated by the commission to speak for it in respect to amendments that were particularly referred to by him, as well as to indicate the views of the commission with respect to the different bills, section by section, as he did last Friday and Saturday. I have nothing to say to the contrary or different from what he said in respect to the several amendments proposed by the commission, forwarded at the request of this committee, together with its views with respect to the different bills and the several provisions in the chairman's bill (H. R. 16312). Our chairman stated the views of the commission in detail, and I do not want to express anything different from them in regard to those features. I therefore deem it wholly unnecessary on my part, from my standpoint, to duplicate what he said or go over that ground in regard to the provisions of these bills.

But there is one suggestion that I would like to make in regard to the court provision, not in any different line from the suggestions made by the chairman of the commission, but he called special attention to what the commission has suggested particularly in regard to a clear definition of the court's jurisdiction, so that no uncertainties may arise as to what shall be the limitations and powers of the commission in regard to the court as regards the question of rates and discriminations. And I am led to do that particularly because of the experience that was had in attempts to enforce the orders of the commission in the period since the act was originally passed, and more particularly before the passage of the so-called Hepburn Act. The condition was one of uncertainty, particularly in regard to the conflicting decisions of the different courts over the country in regard to the scope of their powers of review. It was exceedingly disappointing to the public in general that there was not a more definite line of demarcation between the powers of the commission and the courts in the orders of the commission, causing the delay incident to the attempt to enforce our orders under the processes then in force in respect to appeals, so that we regarded, since the Supreme Court in recent decisions appears to have put down a clear mark as to the powers of the present circuit courts in reviewing the orders of the commission, and makes clear the authority of the commission as well as the courts, that it would be exceedingly unfortunate to put that matter back again into a state of uncertainty and doubt and conflict which would require another decade of judicial interpretation to clear up again.

Mr. BARTLETT. You think, then, that under the Hepburn Act, and under the recent decisions of the Supreme Court, the powers of the commission in enforcing its administrative orders when its jurisdiction is not questioned, or when the question is not alleged to involve the Constitution of the United States, so far as exceeding the power is concerned, is as well instituted now, under the Hepburn Act, as it can be?

Mr. CLEMENTS. If we properly interpret the recent decisions of the Supreme Court, I think it is.

The CHAIRMAN. Permit me to interrupt you just a moment, Mr. Bartlett, and to ask Mr. Clements if he has any formal statement that he would like to make upon these subjects.

Mr. CLEMENTS. I want to refer to the manner in which the judges of the commerce court might be selected.

The proposition in this bill, as I understand it, is, if this court is established, that the judges are to be detailed by the Chief Justice of the Supreme Court, one to serve for a certain period of time, another a different period, and so on; that is, the court is to be made up of assignments or details from the circuit courts by the Chief Justice. It seems to me in the scheme of regulation of a matter so vastly important as that of interstate commerce, affecting every interest in the country and every individual in the country, that a court that is to view these orders with respect to their constitutionality and regularity ought to be a court situated in such a way that its decisions would command the greatest degree of satisfaction and confidence on the part of the whole people—the railroads, the shippers, and the public in general—for, of course, there will be great controversy from time to time in regard to these matters, as there has been in the past, and anything that can be done in the constitution of this court that will contribute to the establishment of a court that would command the fullest possible confidence and respect of all parties, it seems to me, is well worth doing. I do not mean to say that it would not in a reasonable degree accomplish that purpose in the manner constituted, but it seems to me that it is taking it out of the ordinary method of establishing courts, and there are several reasons why the other plan that has been suggested would be better; that is, that it should be constituted of judges appointed under the Constitution in the regular way that other federal courts are constituted. In the first place, it would be an anomaly and it would be a question of wonder why this court was made up in a particular way different from the way in which the Supreme Court, the circuit courts, and the district courts are made up, which are under appointment by the President and confirmed by the Senate. I think it would always be a matter of wonder why this regular constitutional method should have been departed from. Nobody has any greater respect for the Supreme Court and the Chief Justice of the Supreme Court, I think, than I have. But this commerce court, if one is created, is not for a year or a decade, but it is for the whole future; it is a part of this scheme of regulation, perhaps the most important matter of legislation in this country. The rates touch everybody. The railroads in 1907 received from all sources about \$2,800,000,000, which was \$100,000,000 more than the entire circulating medium of this country, including hard money, certificates, and treasury notes—money of every form. Of course they paid back a very large percentage of that immediately, but an amount more than the entire circulating medium of the country has passed into their hands during the course of a year.

The questions of discrimination and reasonable rates will always be raised and must be passed upon by this court if it is created for the purpose herein intended; and it seems to me also that it is hardly fair

to the Supreme Court and to the Chief Justice to put the responsibility of detailing judges that are from time to time to make up this shifting court, which is not to make it a permanent personnel. That is hardly justice to the Supreme Court itself and to the Chief Justice, who would be called upon to assume the responsibility of indicating the judges from time to time, and whose action would be immediately repealable by that court and reviewable by that court. It seems to me that there should be independence of the Supreme Court—that is, independence as between the other courts, just as they exist now. The Supreme Court is not authorized to designate circuit judges to hold court and try any other class of cases, and I don't know why that should be the case in respect to the court created by this bill. And I think the court would be regarded as one of greater dignity, and that it would command greater confidence and would stand as an institution of greater strength in this general scheme which is intended to do justice in regard to all of these great matters, and that it would satisfy the people in a greater degree to the effect that justice is being done, and it would be much better, in my judgment, on that account.

There are other considerations. These questions are more or less peculiar. That has been demonstrated by the line of decisions in the lower courts in regard to these matters ever since the law was passed. A judge very familiar with the statutes of the country, in common law and in equity, is not very familiar with broad questions affecting rates and commercial conditions, economic conditions, competitive conditions, and rate conditions, as they change from time to time. Continuous contact with questions of this kind in the trial and review of cases would be of great advantage to a judge if he is to review these cases with intelligence and satisfaction to the public. Therefore, I think it would be far better, in the constitution of this court, that the judges should be appointed by the President, who himself is elected by the people every four years, than that they should be detailed on a shifting court, changing from time to time, by the Chief Justice, who holds office for life. And I say this not in the slightest derogation of the Chief Justice of the Supreme Court or any member of it. But again I say that this court is not constituted for a day, or a decade, but for all future, and as a part of this scheme affecting this great business. I think such a court appointed in the usual way would command the confidence of the country and of these conflicting interests in a way that a court constituted in any other way would not.

MR. TOWNSEND. What do you say as to the suggestion made by Judge Knapp, that these judgeships should be for life on this particular court, instead of being selected from the circuits?

MR. CLEMENTS. I think that is the only constitutional way. There are federal judges appointed, and must be appointed for life, and I think if the court is to be constituted that that is the way it ought to be done—appointed by the President, confirmed by the Senate, and made a permanent court.

MR. WASHBURN. I would like to ask you how many cases are now pending in the court to set aside the orders of the commission?

MR. CLEMENTS. Well, about 30 or 31, I think, is the number that have been brought since the Hepburn Act was passed, and two of those have been disposed of.

Mr. WASHBURN. Reading from your report of December 21, 1909, I find this language:

The commission has contended that under the Hepburn amendment its orders, in so far as they involve the exercise of discretion or judgment, could not be reviewed and set aside by the court, since to that extent its action was legislative and not judicial.

And then, after speaking of the matter further, the report goes on to say:

The Supreme Court of the United States has not passed upon that precise question, although its decisions seem to sustain the view of the commission; but three judges sitting as a circuit court under the expediting act in the eastern district of Pennsylvania have recently handed down a decision which entirely sustains our contention.

Now, since this report was printed the decisions of the Supreme Court have been rendered in the case of the Illinois Central Railroad Company against the commission and with respect to some other matters, and I understand you to say, with those decisions confirming the views of the commission, that the courts can not review or set aside the conclusions of the commission except where a constitutional question is involved or the powers of the commission itself.

Mr. CLEMENTS. That is what we understand to be the effect of these decisions.

Mr. WASHBURN. Now let me ask you if the recent decision of the Supreme Court to which you have referred would, in your opinion, decrease considerably the business which would naturally come before the newly constituted court of commerce?

Mr. CLEMENTS. Well, I certainly think it would. I think when it becomes a well-recognized and settled principle of law that an order made by the commission can not be alleged by the carrier to take its property without due compensation, and to be confiscatory, that the carriers would desist from entering the field and undertaking to contest the matter; that is to say, when it is well settled that they can not secure the substitution of the discretion and judgment of the court for that of the commission, simply upon the theory that the rate was made a little too low by the commission or for some other reason, and that they could not allege that it was a violation of the Constitution, then they would not file these cases as often as they have in the past.

Mr. WASHBURN. Then, under this condition in which we now find ourselves as a result of this decision of the Supreme Court, have you any doubt in your mind as to whether this proposed new court would be kept busy?

Mr. CLEMENTS. Well, it is very difficult to tell how far the carriers would find it to their interest, or believe it to be to their interest, to allege confiscation until that is tried. There would, of course, be a good deal put onto that court by the provision in this so-called administration bill—the Townsend bill—in regard to the control of competing lines, and the question of fact in regard to whether or not lines are competing lines and whether they fall within the inhibitions of the Townsend bill or not, and as I understand it they are to go to this court.

Mr. WASHBURN. Do you think that the question of determining whether lines are or are not competing might safely be committed to the commission and not to this new court?

Mr. CLEMENTS. Well, I don't know how much more could be put upon the commission with safety, so that it might keep thoroughly up with its work. It is difficult to tell beforehand how much that would involve in the way of investigating work.

Mr. WASHBURN. But it lies right along the line of the regular work of the commission.

Mr. CLEMENTS. Yes; it is closely related. I have always felt that competition affected rates; that the public policy of the country was to leave competition to do its natural work in the question of rates so far as it can be done.

Mr. WASHBURN. If it were not for the new duties conferred upon this proposed court in this pending Townsend bill, and if the business of the new court were confined to the business which now goes to the courts from the commission, and in view of the recent decision of the Supreme Court, do you still think this new commerce court would find enough work?

Mr. CLEMENTS. It is very difficult to answer that question—to anticipate the future. Of course, these questions where confiscation is alleged in respect to important work would present a very large question in a single case for the court to deal with, but how far the necessity of such a court, as appeared a few months ago, would be obviated by these decisions in the diminution of controversies to go before the court, is hard to tell. To illustrate what I have just stated about the importance of a case, and the length of time that possibly might be required by one case, we may take the Northwest Pacific Coast lumber case, where the roads advanced their rates two or three years ago materially on shipments of lumber from Washington and Oregon to all eastern points; and after hearing, and the rates had been in effect for eleven months, the commission determined that these advances were for the most part unjustifiable, but did justify some parts of the increased rates in certain territory. The carriers in that case did not undertake to enjoin our order; that is, they didn't undertake to get an injunction. They put in their rates and proceeded to pay reparation on shipments on the basis of our decision. But at the same time they did file a bill for injunction, and they have been taking testimony on that for months; have had it before a special master taking testimony, in respect to the value of the roads—the Northern Pacific and other great trunk-line roads—their capitalization and their reorganization from time to time, and the volume of their business. The many questions which they have been going into in respect to matters of great moment, such as the rates on lumber over a large territory, practically two-thirds of the United States, must take so much time itself that it requires a long time to investigate them in respect to the question of confiscation; and where we are going to ascertain the value of the road, what it ought to earn, and how far its earning capacity will be affected by the particular order made in the case, it takes a long time to investigate intelligently, and to determine any such question as the constitutionality of the rates made by the order. So that I can imagine that not a very great number of cases would keep the court fairly busy, if they raised questions of that sort to be tried on facts in regard to valuation and reorganizations and their profits and expenses in doing their entire business.



Mr. WASHBURN. How many of the pending cases, as you recall, involve constitutional questions of the kind that you have referred to?

Mr. CLEMENTS. I have not undertaken to analyze the cases with reference to that; but a good many of the cases that have been brought would be, in fact, minor cases as compared with a case such as I have referred to.

Mr. WASHBURN. Do you have in mind how many of the pending cases would be affected by this recent decision in the Illinois Central case?

Mr. CLEMENTS. I have not, other than as Mr. Knapp stated here the other day, that he had asked one of our attorneys to indicate, among some 30 cases now pending, how many of them would probably not have been brought under the present interpretation of the law by the Supreme Court, and I think they made out that it probably would not have diminished the number of cases more than 5 or 6, and that there probably would have been some 25 cases yet under the law as now. Of course, it is easier to know that many of them would be very unimportant cases.

The CHAIRMAN. You say that you have had 31 cases brought in the courts since the Hepburn bill was enacted?

Mr. CLEMENTS. I think that is right.

The CHAIRMAN. That certainly would not be to exceed nine or ten a year.

Mr. CLEMENTS. Well, it is fair to say that practically all of those have been brought in about the last year and a half; nearly all of them.

The CHAIRMAN. Is that the case?

Mr. CLEMENTS. That is the case, as I understood the chairman to state. He looked into that particular matter and stated the other day. I may have misapprehended what he said, but I think that was it.

The CHAIRMAN. That there were no cases brought into court until two years after the Hepburn bill was passed?

Mr. CLEMENTS. I said a few, but practically that.

The CHAIRMAN. Practically that?

Mr. CLEMENTS. Perhaps after a year and a half. I know when we made our annual report, I think for the year 1908, there were very few contests at that time.

Mr. BARTLETT. According to your report for 1908 there were 17 up to that time.

The CHAIRMAN. And is that about the normal proportion?

Mr. CLEMENTS. Yes.

The CHAIRMAN. I wondered if all the railroads for a couple of years had quit litigating on account of the passage of the Hepburn law.

Mr. CLEMENTS. What I meant to say was that a year went by after the Hepburn law was passed before there were many cases filed. There was a little while elapsed before the commission got to making any orders, and then many of them were upon rather minor matters. And, as always happens, when one of these bills making definite advances is passed in relation to regulation there is a short time when the railroads practically acquiesce in what the commission requires.

The CHAIRMAN. Do you think—and you have knowledge of the character of the cases—that 10 or 20 of these cases could occupy a court and keep it busy for a year, providing it did not take the testimony itself?

Mr. CLEMENTS. I should think not. If the testimony is taken by other instrumentalities, then I do not see how they could be engaged the whole year upon that many cases.

The CHAIRMAN. If we should provide a court such as you suggest, to be appointed by the President for life, but should want to discontinue that court in a few years, what would happen then?

Mr. CLEMENTS. I have not looked up the question as to the dismantling of a court, and what you would do with the judges; but I believe there would not be any difficulty about abolishing the court. I don't suppose that Congress is bound to maintain forever all of the courts that they create from time to time.

Mr. BARTLETT. I may say that there was a time when they abolished all of their courts; when Congress passed an act abolishing them; and there was a bill introduced by Senator Hoar to reorganize the whole judicial system, which would virtually abolish quite a number of the district and circuit courts.

Mr. RICHARDSON. They did not abolish the place of a judge holding an appointment for life.

Mr. BARTLETT. But they could cut off his salary.

Mr. CLEMENTS. That has not occurred to me as a practical matter, Mr. Chairman.

Mr. KENNEDY. With reference to competing lines, we had before us a gentleman who contended that all lines competed in this country, and to a certain extent perhaps they do. If we should provide with reference to competing lines as we do in this Townsend bill, the question of whether two lines competed within the limitation that we may put upon that legislation in the bill would be a question of fact, wouldn't it, always?

Mr. CLEMENTS. I think so.

Mr. KENNEDY. You have no power to legislate, but are a legislative commission, to act within the instructions we give you, and the questions would always be a question of fact which could be litigated in court as to whether two lines were competing in the manner which we described in the law or not.

Mr. CLEMENTS. I think it would not always be an unnecessary question in a case where it was alleged they were merged when they were competing lines.

Mr. KENNEDY. You would have a discretion to determine what kind of competing lines you would inhibit from combining; but that is to be fixed by law.

Mr. CLEMENTS. I should think so.

Mr. KENNEDY. So that might be a prolific source of litigation.

Mr. CLEMENTS. I should imagine a good many complicated cases would arise under a provision of that kind.

The question was asked of the chairman the other day by some one, referring to the importance of having rules—that is, principles—to guide the commission, so that it would not be simply an unbridled discretion in regard to dealing with these questions—I don't mean that anybody used that word, but I use it myself, not thinking for a moment of a better one—of having the act in such a way that the

commission, although it is vested with a combination of legislative power and administration, and different theories have been presented as to that, should have the authority of law for what it does or what it is restrained from doing, so far as it is possible to write into the law rules that shall govern. The Supreme Court in interpreting the antitrust law was appealed to by the railroad lawyers in the joint traffic cases especially, and they went so far as to hold the case for reargument at the request of the railroad attorneys, with a view of having revised their opinion in the trans-Missouri case, and hold that the meaning of the antitrust law, which declares any agreement, contract, and so forth, to be illegal and in restraint of trade and interstate commerce, to condemn only such contracts in restraint of trade as were unreasonably in restraint of trade. But the Supreme Court has steadfastly adhered, on reargument of these several cases, to its original determination, that it was the policy of the law and of Congress to provide contracts of that sort, and have refused to qualify the meaning of the words of the statute to say that only unreasonable restraint is prohibited, but restraint of trade. Of course, they have gone far enough to say that it is a direct restraint that is forbidden, and that there is a field where it can be said that the action of carriers is not directly in restraint of commerce where they affect it in some remote degree, such as competition in lines not parallel and far removed from one another; in such a case it may be said that there is some degree of competition; but it is remote and indirect in many cases. And I assume that any court in reaching questions of that kind would exercise the same rule of construction that they have indicated in regard to the antitrust laws.

Mr. WASHBURN. You think, Judge, then, that the Supreme Court has never in any way, in its more recent decisions, modified the doctrine laid down in 1897 in the trans-Missouri case, touching the interpretation of the Sherman antitrust act?

Mr. CLEMENTS. I do not think it has.

Mr. KENNEDY. If we should qualify this part of the Townsend bill that we have been talking about by putting in the word "parallel," to define what railroads should not form a combination, the question of whether a road was so nearly parallel in a mathematical sense as to be within our meaning would be a question of fact, would it not?

Mr. CLEMENTS. Yes, I think it would; and yet there are numerous decisions of state courts defining what a parallel line is. I have not looked them up with reference to this immediate question, but many of the States have that language in the law—of prohibiting mergers of competing and parallel lines.

Mr. BARTLETT. They have in the constitution of the State of Georgia.

Mr. KENNEDY. It makes no difference how definite the law may be, a question can be raised which will be a pure question of fact, whether or not you are within the language.

Mr. CLEMENTS. Undoubtedly; I think so.

Mr. RICHARDSON. I want to ask if, under the Townsend bill, the commerce court is not clothed with any other or additional jurisdiction over the orders and proceedings of the Interstate Commerce Commission, and if the circuit court has not now the same jurisdiction that the commerce court would have over matters, orders, and proceedings of the Interstate Commerce Commission?

Mr. CLEMENTS. As we understand it, it is the intent of the bill creating this court to confer that power, and no more. We have suggested some particular language with a view of other expressions in the bill, which we regard as necessary in order to make absolutely sure that that would not happen.

Mr. TOWNSEND. Have you seen the last bill that has been presented?

Mr. CLEMENTS. It was brought to my attention the other day during the session, and I have not had a chance to look it over.

Mr. RICHARDSON. I think that Mr. Knapp stated that the jurisdiction was the same, and I wanted to inquire wherein and how the public interest is benefited by the establishment of a commerce court that has exactly the same jurisdiction and no more than the present court has.

Mr. CLEMENTS. As I understand the formation of this court—and that has been my understanding from every source from which I have heard it, so far as the Interstate Commerce Commission is concerned, and also the members of this committee so far as they have been in favor of a court—was for the purpose of expediting to finality these controversies.

Mr. RICHARDSON. Finality?

Mr. CLEMENTS. Yes, sir.

Mr. RICHARDSON. Haven't they a right to appeal to the Supreme Court?

Mr. CLEMENTS. Undoubtedly; but they could get there quicker through a court of this kind, for instance, in a case where the California dockets should be crowded—

The CHAIRMAN. You say that they could get there quicker?

Mr. CLEMENTS. I think so.

The CHAIRMAN. The only grounds upon which an appeal can be taken are the grounds of jurisdiction or a constitutional question, upon both of which it is assumed that probably an appeal to the Supreme Court of the United States can be made. So, how will the case get there quicker and go through the intermediate courts when it can go just as quick—that is, go directly to the Supreme Court from the circuit court?

Mr. CLEMENTS. As it is now it goes to the circuit court first, and under the expediting act, upon the certificate of the Attorney-General that it is a case falling within the provision of the law, it is necessary to get three judges together before they can consider it—that is, one judge is not authorized to enjoin the orders of the commission; it takes a court of three on a certificate of that sort from the Attorney-General.

The CHAIRMAN. It takes the same number of judges that sit in the circuit court of appeals?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. And there are always three, practically, at those places?

Mr. CLEMENTS. Well, we have found in actual practice that in a number of cases it quite often occurs that they could not be had at the time the case was set down for hearing—at the time the notice was given—and in some cases we have had to extend, on the suggestion of the court itself, the effective date of our order; put it forward to give the court time to reach the case before the order would be-

come effective. Of course I suppose that could all be taken care of, so that it would not ultimately result in great delay due to that fact alone. But take an order that becomes effective in July or August, when the courts have adjourned on vacation and have closed their business for the season, some of the judges are abroad and some at various resorts having a rest. In that case, if an important matter should come up, it would be impossible to get them together.

Mr. ADAMSON. If you should have made a mistake in your estimate as to the probable amount of business of this court, and, on the contrary, a great multitude of cases should get into that court, wouldn't it be possible for business to be just as congested in that court as it is under the present system?

Mr. CLEMENTS. Yes; of course, if there should be such a vast number of cases. But I would not anticipate, judging by past experience, that the court would be overwhelmed.

Mr. ADAMSON. If the carriers should regard only one channel, which would be created by that court, as better adapted to the appeal, and the congestion of the court would give them more time, then it would afford them a good reason for favoring this court, would it not?

Mr. CLEMENTS. Well, it might; I don't know. I had not supposed that that was any motive that had actuated them, and I really do not know to what extent they do favor it.

Mr. ADAMSON. Have you observed that they are anxious to expedite the trial of all these cases?

Mr. CLEMENTS. No; we have not as a rule. Under the old law, where the commission had to go forward and get a decree enforcing its own order, we had a great deal of trouble, and there was great delay and difficulty in bringing the cases to a hearing. Under the proposed act the matter is reversed, the order of the commission automatically becomes effective by its own virtue at the end of the time fixed by the order of the commission, not less than thirty days, so that the carriers must go into court in order to get rid of it.

Mr. ADAMSON. I suppose the purpose of this provision is to exclude the jurisdiction from all other courts upon these specified purposes so that the commerce court judges can do these particular things?

Mr. CLEMENTS. My understanding is that it does exclude all other courts, and the argument for it was to avoid the confusion of conflicting and various views of the different circuit judges all over the country. For instance, a circuit would have one case of this kind, a rate case, and perhaps no other for two or three years; and I have thought in a great many cases that they give their opinions and decisions, with all due respect to the courts, in a way to indicate that they were not as familiar with cases of this sort as they were with cases of common law and equity that ordinarily came before them.

The CHAIRMAN. The proposition in respect to the creation of the commerce court is in order to have a court pass upon questions involved in civil suits affecting freight rates and other railroad matters?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. Are not the larger proportion of cases affecting those matters, cases that relate to the action of state boards and state rates, involving practically the same questions as are involved under

interstate propositions; and if so, if the commerce court should be created to determine with reference to interstate propositions upon the ground that you would get better decisions that way, should not that court be vested with exclusive power to enjoin the enforcement of state laws and the orders of state railway commissions, and so forth?

Mr. CLEMENTS. Well, it would be difficult for me to offer any reason why the matter should be differently treated. If it is a constitutional question, a question of confiscation, whether it is a state rate or an interstate rate, I would not be able to offer any reason why, when a federal court is appealed to to enjoin a confiscatory rate, the same argument made to this court would not apply to the state rate as well as the interstate rate. It is a question of power under the Constitution of the United States, a federal question, and I should think that the same reason that would be determined by this court in the one case would apply to the other.

Mr. WASHBURN. Inasmuch as the cases hereafter to be brought are likely to be, most of them, those involving constitutional questions, if there is a disposition on the part of the circuit court to hasten the proceedings, there is no reason, is there, why they can not be certified very promptly to the Supreme Court?

Mr. CLEMENTS. Do you mean decided?

Mr. WASHBURN. I mean certified to the Supreme Court under the terms of the so-called expediting act, which provides that in the event of the judges sitting in such cases being divided in opinion, the cases shall be certified to the Supreme Court for review, and so forth. Now, with the circuit court, recognizing that a constitutional question is involved, is there anything to interfere with its being promptly certified to the Supreme Court?

Mr. CLEMENTS. The Supreme Court has recently decided, as I understand it, that that provision for certification on the basis of a division of opinion in the lower court is not good except perhaps where they are equally divided. That would make a case go to the Supreme Court. But they have decided where two judges differed from one on the same bench in one of those cases, that they could not certify the case up and make the Supreme Court try the case originally.

Mr. WASHBURN. Is there any reason that occurs to you why this expediting act, if it is not in satisfactory shape now, could not be so amended as to insure speedy hearing of these cases by the Supreme Court?

Mr. CLEMENTS. It all depends upon whether you could secure a speedy hearing from the court below. I think the Supreme Court will hold that these cases can not, by any authority of legislation, be put up to it to be originally tried *de novo*. They have practically said that that was a court of review only.

Mr. RUSSELL. What is your opinion about the proposition to limit the right of the Interstate Commerce Commission to appear before the court of commerce and take part in the conduct of any litigation in the court of commerce?

Mr. CLEMENTS. That is a matter which I think under the present law the Attorney-General could take entirely under his own control—that is, the law says that when proceedings are instituted by the commission it shall be upon the request of the district attorney, who shall

file and prosecute a suitable proceeding under the direction of the Attorney-General. So I suppose that that could be done now. The real practice in the past has been that Congress gave an appropriation which could be allotted for the employment of special counsel in particular cases. I think that appropriation has been limited to \$20,000 for some years.

The CHAIRMAN. You do not bring suits yourselves any more?

Mr. CLEMENTS. That was commenced under the old law when we did bring suits, and the same rule has been followed since. Under the Hepburn Act we had an allotment in the general appropriation for the support of the commission that we could use for the employment of special counsel in particular cases, under the approval of the Attorney-General. It was all subject to his approval under both statutes.

Mr. RUSSELL. The proposed law, in section 5, says:

The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation.

Mr. CLEMENTS. Well, of course it must be frankly admitted that a provision of that sort is liable to work out something like this, and I don't know whether it will or not. I don't know how far it might embarrass the enforcement of these orders in the future, but in many of these important cases the lawyer representing the complainants has worked out all the facts and presented them to the commission, and they are familiar with the questions of fact and law and the traffic conditions involved in the matter; and in some cases have done a vast amount of work in the preparation of the cases originally before the commission, and of course a provision of that kind would render unavailable his services in the case, and the usefulness that he might be in the conduct of it, due to his great familiarity with it from beginning to end in all its details as to questions of law and fact.

Mr. TOWNSEND. Has there been any conflict between the attorneys for the commission and the assistant attorneys-general?

Mr. CLEMENTS. I don't know to what extent. There may have been some slight misunderstandings in regard to some questions of law that could be stated in a brief. Mr. Prouty, a member of the commission, has had direct touch with our lawyers in the preparation of these matters for the courts. I think there has been some difference of opinion as to questions of law that should be stated or contended for in some of these briefs. I don't know that we can say that it was a serious conflict.

Mr. TOWNSEND. Would it be embarrassing to you—and you need not answer the question unless you wish—to answer this question, whether Judge Prouty himself, who had charge of the law end of the commission, is not favorable to the Department of Justice taking exclusive control of these matters?

Mr. CLEMENTS. Well, I do not know whether he favors it or not. I ought to say that I do not understand that he is making any opposition to it.

Mr. ADAMSON. In changing attorneys it is possible before the court to present the case in such a shape as to make a different appearance of it entirely, is it not—that is, in hearing the same case?

Mr. CLEMENTS. The Attorney-General might, of course, not think that the commission had decided the case right, and he might think

that it was an order that was not defensible. I do not know whether any trouble would come out of that or not; I have not apprehended that there would, but of course it is possible.

Mr. ADAMSON. A different set of lawyers might proceed in a different manner in presenting the case and present it in an entirely different aspect to the court, so that the court would not pass upon the same matter that you passed upon really.

The CHAIRMAN. Does not the present practice sometimes lead to considerable extravagance in taking care of cases? For instance, I had my attention called last spring, when I was home, by accident, to three attorneys from the Interstate Commerce Commission, each appearing in Chicago before one of the courts there—all before the same court—and each one in a different case, on a motion where the entire three motions were disposed of in less than ten minutes' time, but it required three attorneys of the Interstate Commerce Commission to make a special trip to Chicago, on a limited train, in order to appear in three cases on formal motions that I would have sent an office—not an office boy, but a clerk in the office—to attend to, and to all three of them at once.

Mr. CLEMENTS. Well, Mr. Chairman, I doubt if you would send an office boy from Washington to Chicago to attend to a matter in a federal court.

The CHAIRMAN. I would not send an office boy from Washington to Chicago to attend to a matter of that sort, but I should have written to the district attorney in Chicago and directed him to appear in court on a formal motion that would be granted as a matter of course.

Mr. CLEMENTS. I don't know what the motions were nor what the cases were, and how far they would have been granted as a matter of course. But it has not been our experience that we were always very safe in the presentation of these questions, with even good lawyers not familiar with the special nature of them, and with the line of controversy. But I am perfectly free to admit that on the state of facts to which you refer there seems to have been unnecessary duplication in the presentation by the three lawyers. I don't know the special cases in which they appeared, but it must have been quite certain that that would be an unusual thing.

The CHAIRMAN. I am not making that statement as a criticism of the officials, as perhaps no one of the three knew that the other was to make a motion of that kind.

Mr. CLEMENTS. There has been a liability that controversies that have arisen in Iowa would come up in Chicago—I don't know whether Iowa is in that circuit or not—but one attorney for the commission might be in Iowa, if that is the case, in the conduct of one case and another in another circuit, and these motions were simply incidental in the same way, and the attorneys being in different parts of the country and looking after these things from different standpoints might not have been aware that each one was going to be there in reference to the cases that came up from the different States. But undoubtedly a little administrative attention to the possibilities of such things happening as that would result in their correction. I am perfectly certain that there has not been enough of it to amount to any serious expenditure of money or to any extravagance.



The CHAIRMAN. I would like to direct your attention to another matter in respect to water carriers. Have you noticed the arguments that we have printed of Mr. Hayne, who makes a very vigorous protest against including the law as to water lines? If you haven't noticed the argument, I wish very much that you would look it over—you and the other commissioners, if you please—and give us your opinion with reference to the amendment that he suggested.

Mr. CLEMENTS. I have not had a chance to read these hearings.

The CHAIRMAN. I think that the amendment that is suggested is to the effect that the commission shall not have power to make a through route, including a water line, where a satisfactory through route exists, although they may have that power as to the different railroad lines.

Mr. CLEMENTS. Well, I would be glad to look at that and to take it up with the commission. I have not been able to read the reports of the hearings yet.

The CHAIRMAN. Of course, that is an important matter to know, whether we are changing the statute by leaving that little provision in the Townsend bill, which is already in the law, but which may cause a change, by other changes in that section, not contemplated.

Mr. CLEMENTS. Most of the matters that have come before us in a particular way have been complaints, formal or otherwise, on the part of water lines originating business on a river, for instance, that could not get a through-route arrangement with the connecting railroad which already had one with another water line on the same river.

The CHAIRMAN. I have suggested this matter, upon which I am utterly at sea as much as a floundering vessel would be, and I wish you would give us an opinion upon that proposition.

Mr. CLEMENTS. I will look into it.

Mr. STAFFORD. Have those complaints arisen in respect to the interior waterways, or have they been also applicable to the coastwise trade?

Mr. CLEMENTS. Most of them in the interior water lines. One of the earlier cases applied to the Tennessee River, before I was a member of the commission. There was a steamboat line plying between Decatur, Ala., and Chattanooga, Tenn., and the Louisville and Nashville Railroad, I think it was—it may have been the Nashville, Chattanooga and St. Louis Railroad, which is controlled by the Louisville and Nashville—had an arrangement with one boat line and refused to make one with another line. The commission held that it had no authority to compel a through route, and you can see how easy it is for a railroad commanding a situation like that to give the river business to one boat line and destroy the other by simply doing what under the law it was permitted to do—make the through arrangement with one and refuse it as to the other.

Mr. RICHARDSON. That was a boat line running between Hobbs Island and Gunterville. There was some provision in the river and harbor bill by which there was an appropriation of \$15,000 to dredge a channel between Hobbs Island and Gunterville, because there is a boat line which carries the mail there; the people are absolutely dependent upon it, and there are times when for four months, on account of low water, it can not operate. I think that is the boat line you refer to. The Nashville, Chattanooga and St. Louis Railroad

does not run to Decatur, but it does run to Huntsville and connects with the river at Hobbs Island, and the boat line runs from there on.

Mr. CLEMENTS. That was a former case decided by my predecessor on the commission.

Mr. STAFFORD. Then, as I understand the complaint in the case you instanced, it was that the railroad delivered some traffic to one individual boat line and refused to share it with the other, rather than that the railroad connecting line refused to receive from the boat line and dispatch it over the rail line?

Mr. CLEMENTS. I think it was both ways—that the railroad had an arrangement of through rates with the boat line and would take a division of less than its own railway rate on through business going from one boat line, but would charge its full railroad rate on business offered by the other boat line, so that the tendency was to drive all the business to one boat line and away from the other. We have had several cases of that kind, one on the St. Johns River in Florida.

Mr. STAFFORD. Have any cases arisen in connection with trade on the Great Lakes?

Mr. CLEMENTS. I do not recall any question of that kind there. Of course, a great many cases have arisen in regard to that business, but most of those boat lines are regular lines and are owned by the different railroads. The New York Central has its line of boats, and so do the other roads there; yet they are incorporated, most of them, if not all—managed—as separate boat lines, but owned by some railroad system.

Mr. STAFFORD. But the gentleman who appeared here the other day, in protesting against extending the jurisdiction of the commission, represented an independent line, and not lines such as the Anchor Line, which operates in conjunction with the New York Central, but a line such as the Detroit and Cleveland Navigation Company, the Goodrich Line of steamers from Chicago to Milwaukee, and other independent lines which are not, as I understand it, controlled by railroad companies. In the same way with the representative of the Mallory Line, which, I understand, is an independent line. He protested against any such authority being vested in the commission.

Mr. RICHARDSON. I don't recall distinctly, as you do, the facts connected with the Nashville, Chattanooga and St. Louis Railroad and the Tennessee River, but don't you think that the Nashville, Chattanooga and St. Louis Railroad did its own boating toward the city of Huntsville, and handled through traffic from Nashville to Attalla by way of Gunter'sville and the river, and refused to give another competing boat line the same terms?

Mr. CLEMENTS. That case was heard and determined by the commission before I was a member of it, but I am perfectly certain that the railroad did not own their boat at that time. This was a test between boat lines; one wanted the through business and it was denied. And the same thing has often taken place in other places. The importance of this matter, so far as I see, is mainly for the purpose of giving a boat line, situated like that, a fair chance to do business, and to give the public any benefit of competition that comes from it in the use of these rivers upon which the Government spends so much money to make them available for that business. And I do not suppose that that would interfere with the proposition that this

gentleman has. He was undoubtedly looking at it from some other standpoint.

The CHAIRMAN. We will furnish you copies of hearings containing those arguments, and I would like to have the commission give us a written opinion in reference to them.

I would like to direct your attention to another matter upon the question of the time during which the rate shall be suspended. The Townsend bill proposes two months, and your commission has suggested four months. Can you give us an idea about how long it takes your commission now to hear and determine an important case involving rates?

Mr. CLEMENTS. Well, I referred a moment ago to the Northwest Pacific Coast lumber cases, which were very important ones. They were all practically handled as one, although there were several of them, but they were disposed of in one record, and we disposed of them in about eleven months. But, of course, in the meantime there were many other things done. They were, however, handled with a good deal of expedition, under all the circumstances, and they involved the rates from the States of Washington and Oregon to every place in the East, and from Idaho to the Atlantic Ocean.

The CHAIRMAN. Assuming that we do not desire the commission to abandon its ordinary duties, would it be practicable for the commission, when it ordered a rate suspended where the matter involved probably a great many rates in different parts of the country, to hear and dispose of the merits of the proposition within two months' or four months' time?

Mr. CLEMENTS. I think it would be very difficult, if not impossible, to do it within either period in some cases. In August, 1908—I think it was 1908—the chairman of the railway commission of Texas, with Senator Culberson, came into our office, along in August. I think it was, and protested against the increase of rates from all points in Texas, class and commodity rates, and all. The notice had been given that there would be an increase on the 10th of August, perhaps, and a few days before they were effective these gentlemen were there to find some way to protest against it, and we told them that the only safe way would be to institute a proceeding that would be clearly within the law and to file a complaint. Some intimation was made on their part independently, on their own initiative, to the effect that we should investigate it, but we pointed out the question of doubt if we did that, and suggested that if we reached a conclusion and made an order condemning these increased rates, the question would be raised as to whether or not we had any jurisdiction, since the fifteenth section of the Hepburn Act says that upon full hearing the commission can prescribe a through rate, and they ought not to put in right at the threshold a question of controversy that might endanger the whole thing if an investigation was had. It was very important, and it covered a large field.

They filed their complaint, and some members of the commission first went down to St. Louis and spent three or four days there taking testimony, and it was suggested by two or three parties that there ought to be testimony taken in Texas, and an appointment was made there, and a week was spent there taking testimony; and at the conclusion of that there was further testimony to be taken at the request of the parties. The complainants wanted to present testimony them-

selves, as well as the railroads, and quite a number of months have been spent in taking testimony at different places at different times, and the proceedings, of course, had to be interrupted on account of the engagements of the lawyers in other matters in other courts; and in a case of that kind it seems to me impracticable always to be able to investigate these things and determine them either within two months or four months.

We had another case of that kind arising with respect to grain rates from the Ohio River to Atlanta and southeastern territory, and when we had gotten through taking testimony in that case the lawyers for the complainants wanted sixty days in which to write their briefs and get ready for an oral argument after the testimony was completed. The complainants themselves asked for sixty days in which to complete their briefs alone, so that as a practical matter, if these matters are to be thoroughly investigated, and then the parties are to have time to write briefs that will be of any value, and if they are to have the right of presenting oral argument, which they will probably insist is involved in the "full hearing," from the language of the statute, I do not think that two months is sufficient time in which to do these matters.

If the policy of Congress would be that the commission would hear the testimony and confer among themselves about it, without having to take it up carefully afterwards and consider it and make any report about it and hear oral arguments and hear briefs, we could, perhaps, sit down and hear testimony in a general way with respect to these great controversies, and hear the oral arguments, such as lawyers could make upon that sort of hearing of testimony, and reach some general conclusion, and state it, and deal with it in that way.

The CHAIRMAN. May I make this suggestion: We are all lawyers—I think I have that title, anyhow; I speak for myself in this last respect—and we know that it is not possible in the due administration of justice to determine great cases, after having had hearings and arguments, within four months' time. But would it be practicable if we should give to the commission power to suspend a rate for four months and then the further power at the end of four months within their discretion to make a further suspension of the rate until they had determined the merits of the case, it being possible within four months' time to ascertain whether there were any meritorious propositions involved? Would it?

Mr. CLEMENTS. I should think a provision could be framed upon that line so as to make it practicable.

The CHAIRMAN. Of course it is easy enough to make a law, but the question is, Would it work?

Mr. CLEMENTS. I think that would work. The commission could tell at the end of four months whether it was necessary to extend the time or not, if it had reached the conclusion at that time that there was no merit in the case, and without taking time to write it up and make a report upon it in all of its features they might say, "There is no use to extend this time." In that way you could eliminate all cases except those in which it was made to appear that there was probable cause for complaint and necessity for further time to fully investigate it and make a conclusion in the case, which the com-

mission would not do if it was demonstrated that there was probably merit in it.

The CHAIRMAN. In your opinion, would it seem quite logical for us to give to the commission power to suspend a proposed rate for the purpose of having a determination of the matter before the rate went into effect, and then in the middle of the consideration of the case, at the end of four months' time, permit the rate to go into effect without a determination of the merits of the proposition?

Mr. CLEMENTS. It seems to me that would not help the situation any in a case where it would be necessary to do that. It might just as well have gone into effect in the first instance as at the end of two months. And one very strong argument, which I think must appeal to anyone in behalf of some provision of this sort, is well illustrated in these lumber cases. In these Northwestern lumber cases, where some of the large shippers went into court and got an injunction against the collection of the increased rates, they put up a bond—a number of them did—out there, aggregating as much as two and one-half million dollars, to pay back whatever of the increased rate was justified by the commission and the finding of the court. At the end of eleven months they were to have an accounting in the court out there, and did have it, and it appeared after the end of eleven months in court that those parties to that injunction proceeding would have been liable to have paid \$1,250,000 on their shipments in eleven months if the full advance had gone into effect. As it was, at the end of that period, under the injunction and accounting in court, they were found to be liable for about \$350,000. That illustrates that in that time there would have been paid back a million and a quarter, nearly, and that did not cover all the shipments in that country there. But, on the other hand, it did show that, according to the decision of the commission, if it was correct, the carriers would have been deprived of about \$300,000 or something over if they had not been protected in some way. They were in this case under a bond.

In the southern pine cases, where the rate was not enjoined, it went on for about four years before the controversy was finally settled under the old procedure by the Supreme Court. The higher rate on 200 pounds was dissolved, and it resulted in reparation claims for \$3,000,000 or \$4,000,000, and they have since then been in process of adjustment. The roads established a clearing house in New York, and one in Macon, Ga., and one here in Washington, to check up what reparation was due on these hundreds of thousands of shipments in those three or four years, and then they made some sort of a compromise. It was nearly impossible to settle it except in that way. They had to find out to whom the money was due; who was the actual shipper. Sometimes it was claimed by the consignor and sometimes it was claimed by the consignee. They had to find out what proportions were to be paid. The commission had all this testimony, but they had not any way by which to prove their claims except to call for the records of the railroads, and they have had this going on at great expense for three years nearly—between two and three years—and the ultimate outcome as estimated will be, as an adjustment of these matters, that the roads will get back something like a million and a half dollars.

The shippers are accepting about 67 per cent of the face value of what would be their claims, as can be best estimated from such records as they have, without interest. I think they have done a wise thing, because of the great difficulty of making the proof in those cases and the great length of time it would take to follow up these shipments and bills of lading and ascertain the weights and everything incident to them. It illustrates the great confusion which comes both to the railroad and to the shipper when money has to be paid back.

The CHAIRMAN. Of course, the ultimate consumer does not get any benefit from it anyhow.

Mr. SIMS. In order that the commission may do absolute justice in each case, why should they not have the discretionary power to suspend the rate until they could find out the facts, in order to do absolute justice?

Mr. CLEMENTS. That seems to be the most practicable thing and approaches more nearly what would be a just thing to do, because in nearly all of these cases it must be remembered that the rate which was advanced was a rate which the railroads themselves have made and which was in effect for years, and it is simply holding in statu quo a situation which they themselves have voluntarily created and have been apparently satisfied with for a long period of time. It is not a hardship to say, "If you have established these rates yourselves and have been content with them and have done your business under them, and you want more now and propose to get it by an advance of rate, the matter should be held in statu quo until a reason could be shown for it."

Mr. KENNEDY. Judge, I would like to call your attention to the words "after full hearing." Has the contention of the attorneys been in these hearings that they have not been fully heard, and does that phrase protract the hearing of the cases?

Mr. CLEMENTS. We have always, so far, been able to give them a hearing, with the taking of testimony, and the filing of briefs, and the giving of oral argument in such a way that they have been content with it, and content to let it alone, at least. Of course we can not give all the time for oral arguments that they would have taken. We have to limit that in almost every case.

Mr. KENNEDY. It occurs to me it would be well to strike out the word "full" and let the commission determine when they have heard enough. A little discretion like that would perhaps expedite these hearings.

Mr. CLEMENTS. That might perhaps remove the possibility of a controversy. I refer to the language of the statute, not that there has been a claim made in any case that we have not given them a full hearing. We have had to limit the oral argument in most cases, but they have accepted it. All the courts do that, and there has been no real contest that we had denied them of any legal right. But if we had to act in such a manner that we would take written testimony and not wait until it could be written up and briefs could be made, I do not know but that they could say that was not a full hearing at law.

Mr. KENNEDY. Don't you think the taking out of that word would give you the right to conclude the hearing when you felt sure you had heard enough?

Mr. CLEMENTS. It would remove possible contention in some future case.

Mr. STEVENS. Might it not be, Judge, that under the doctrine laid down by the Supreme Court that only jurisdictional and constitutional matters can be contested—might it not be on a jurisdictional matter that they had not had a full hearing? Might not some of the parties contend before the court, whatever court would have jurisdiction of your orders that had been contested, that the hearing had not been a full hearing, and therefore assail your whole jurisdiction under the other language?

Mr. CLEMENTS. Yes; that is what I referred to a moment ago. If we had to do this in sixty days, and we could not hear it in what would be the ordinary way, there might arise a question of that sort.

The CHAIRMAN. We put that in there, according to my notion, for this reason: We did not wish the commission, in disposing of one case, to assume that it had learned all that there was to be known on the subject in connection with a similar case, because it had heard and disposed of that one case, which would be the tendency of every administrative body.

Mr. CLEMENTS. Yes.

Mr. TOWNSEND. You have no trouble about this now, do you, Judge?

Mr. CLEMENTS. No, sir; not on these words so far.

The CHAIRMAN. I want to ask you another thing, and that is as to the proposition of appeals by shippers. Would it be practicable or beneficial or injurious, in your judgment, if we should confer upon shippers the power to appeal to the courts for the determination of the law where the commission could throw the claim of the shipper out of court on legal grounds and not upon questions of fact?

Mr. CLEMENTS. Well, I have frequently thought that it was very plausible on the part of the shipper to say that he is not satisfied with what the commission has done and that he ought to have the right to appeal, and as a member of the commission I would be awfully glad if he could have the right to appeal if there was some way in which it would be practicable. But since the Supreme Court has said that the making of a future rate is a legislative act, how can you confer upon any court the power to review it and substitute its judgment for that of the commission, any more than you could have the judgment of the court substituted for that of the judgment of Congress as to the propriety of the legislation?

The CHAIRMAN. Of course that goes without saying. You can not, and I have not seen any method yet by which you can get an appeal. But it has been urged very strongly here that where the commission decides a question of fact and then decides upon the facts, and under its construction of the law it has no power to grant relief as a legal proposition there might be some way of having the courts construe the legal proposition.

Mr. CLEMENTS. I suppose there might be some certification of that sort or provision of law put to a court that would review a question of law and instruct the commission to proceed, or indicate to it some other construction of law. I suppose such a machinery as that is possible.

The CHAIRMAN. I think there is some machinery of that sort under the English statute. I am not sure what it is.

Mr. TOWNSEND. Do you know of any cases where that would have been employed by the shipper if he had had the right?

Mr. CLEMENTS. I could not say I have knowledge of any except in one case. I think we have a very peculiar case pending in court now, and that is where a shipper has filed a bill in the circuit court to compel the commission to award reparation on a large number of shipments in which the shipper had claimed reparation and which we had refused, and he has undertaken to do something which is equivalent to mandamusing the commission and seeking to compel it to go ahead and let it be done upon the complaint that we had not done the proper thing. That is the only case where I could point that that course would probably have been taken if it had been open to the shipper. Of course, some of the shippers have been very much dissatisfied with some of our decisions. That particular case is where, on hard-wood shipments of lumber, we allowed reparation and condemned the advanced rate; allowed reparation back to the time the complaint was filed. But we did not go back to the full limit or statutory period and allow reparation for that whole period.

Mr. TOWNSEND. Is any constitutional right violated now by the shipper or the carrier? Do you know of any way that he can go into court and have that determined? You do not know of any possible way in which he can get into court except when there is a violation of a constitutional right?

Mr. CLEMENTS. I do not know of any way unless it might be on a question of a claim for reparation, if he chooses to come before the commission instead of going into court for it; and in the Abilene case the Supreme Court held that he can not go into court when the rate itself is involved until it has been determined under the ruling of the commission.

The CHAIRMAN. Under the old law the shipper could come into court or might sue the railroad company in any court?

Mr. CLEMENTS. Yes. That was according to the apparent language of the law.

The CHAIRMAN. According as the court determined whether the rate charged by the company was reasonable or not; but under the existing law the shipper can not go into court and have the court determine whether the rate that he is charged is reasonable or not. He must come into your commission, as I understand it?

Mr. CLEMENTS. I understand that to be the present law and the decision of the Supreme Court.

The CHAIRMAN. Is there any other question that any gentleman would like to ask?

Mr. RICHARDSON. There are some questions I would like to ask the judge about the opinions he has been giving in the last few minutes concerning the suspension of the rate. As I understand, the law now is, under the Hepburn law, that the common carrier has got to give thirty days' notice of any proposed change in its schedules, one or more, and the commission has no authority to suspend that rate or any other rate except when a complaint is made by some one and the commission declares it to be unreasonable. This is additional authority that this bill gives the commission, if it becomes a law, to suspend the rate. Now, do you believe that it is a good policy to



take from the common carriers of the country the power and right to initiate rates?

Mr. CLEMENTS. Well, I think it is certainly a reasonable thing to do to them, and a necessary thing to do in behalf of the public—to hold in abeyance that increase of rate until its reasonableness can be settled. I do not quite agree that that is initiating the rate. It is simply holding that rate then made in statu quo, and when they ask to increase it asking for the reason for it.

Mr. RICHARDSON. That is what I wanted to get information from you about. Is not that in effect practically giving to the Interstate Commerce Commission the authority to initiate rates, because all of the rates that railroads adopt or agree upon or file with the commission would be or should be sooner or later subject to that rule or power of the commission to suspend it for the time being?

Mr. CLEMENTS. Not any more so than you authorize the commission now upon complaint and hearing to authorize the future rate. That goes on from time to time now. I do not understand that the holding in abeyance of a proposed increase is any more the fixing of a judicial rate upon the carrier than upon the hearing to condemn the existing rate and prescribe a lower rate.

Mr. RICHARDSON. You do not contend, when the railroads can not initiate a rate without the approval of the commission, that this is giving the railroads the power to initiate the rate?

Mr. CLEMENTS. They have the power to initiate all the rates now.

Mr. RICHARDSON. That is modified now, as I understand it, by the power given to this commission to suspend the rate.

Mr. CLEMENTS. Well, I think the suspension in this case is simply to hold things where they are until you find out what ought to be done.

Mr. RICHARDSON. Now, I want to ask you another question: Do you believe that the physical valuation of the railroad presents a fair and reasonable criterion by which to regulate rates?

Mr. CLEMENTS. I think it would greatly help any tribunal dealing with rate questions to judge properly by. It would be a material help, but it would not be the sole consideration. It would not be as controlling ordinarily as it would be when you get into one of these controversies in court. When you get into court the first thing that is alleged is that this property is worth so much, and that it owes so much in bonds, and that it takes 65 or 70 per cent of its gross earnings to pay the operating expenses, and it has so much more to pay as taxes, and so much more for the interest on the bonds, and there is but little left to the stockholders, and therefore an appeal is made to the court for an injunction against the reduction of the rate. And right there, immediately, whoever does that must pass upon that question, and must begin to look to the value of the property. The Supreme Court has said that they may earn a fair value on the investment. Now, what is the investment?

The CHAIRMAN. Judge, will it be satisfactory to you to return at 2 o'clock this afternoon?

Mr. CLEMENTS. Yes.

The CHAIRMAN. I think several of the members of the committee desire to interrogate you further.

Then, without objection, we will take a recess until 2 o'clock this afternoon.

(Thereupon, at 11.55 o'clock a. m., a recess was taken until 2 o'clock p. m.)

#### AFTERNOON SESSION.

Pursuant to recess taken, the committee reassembled at 2 o'clock p. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. Mr. Reporter, here is the brief of Mr. Bentley W. Warren, attorney for the Boston and Northern Street Railway Company and the Old Colony Street Railway Company, for printing in the record:

#### STREET RAILWAYS AND INTERSTATE COMMERCE.

*Street railways should not be included among the transportation agencies subject to the act of Congress to regulate commerce, approved February 4, 1887, as amended.*

At the outset of any discussion of this proposition it is necessary to define what is meant by a street railway. In Massachusetts our statutes distinguish three different classes of railroads: (a) The ordinary railroad, (b) the street railway, and (c) the electric railroad.

The statute definitions are as follows:

"Railroad" means a railroad or railway of the class usually operated by steam power.

"Railroad corporation" means the corporation which lays out, constructs, maintains, or operates a railroad of the class usually operated by steam power.

"Street railway" or "railway" means a railroad or railway, including poles, wires, or other appliances and equipment connected therewith, of the class operated by motive power other than steam, and usually constructed upon the public ways and places.

An electric railroad is "a railroad or railway \* \* \* of the class operated by electricity or by any power other than steam \* \* \* and constructed wholly upon private land purchased or taken by said company under the provisions of this act; or constructed partly upon such private land so purchased or so taken by said company and partly upon public ways and places, but at least one-half of which is constructed upon such private land."

The electric railroad in Massachusetts, as defined above, is, as respects the powers and liabilities of the corporation operating it, for many purposes a railroad operated by electricity.

The test laid down in Massachusetts statutes for recognizing a street railway, viz, a railway usually constructed upon the public ways and places, is one approved by experience, and will be found, upon investigation, to be consistent with practical considerations. The purpose of such railways is essentially different from the purpose either of commercial railroads or of electric railroads.

A street railway is designed to meet local need for short-distance transportation. It represents merely an improved use of the streets and highways themselves. Its accommodation of the public is confined almost entirely to carrying from one point to another point in a public highway passengers who, but for the street railway, would either be compelled to walk or drive between the same points. It receives and discharges its passengers within the limits of the highway, stopping for both purposes at frequent intervals. A street railway either performs no business in the carriage of goods and merchandise, or when it does perform such carriage, does so in an incidental and quite subordinate way to its primary function of the transportation of passengers. Such carriage of goods as is either done or is capable of being done upon a street railway is strictly analogous not to the freight business of railroads, but to the light teaming performed in cities and towns by teamsters and by local trucksters, or, as they are called in Massachusetts, city or suburban expressmen. Business of this sort done upon street railways would otherwise be done with wagons upon the highways, and not by freight cars upon the regular railroads.

Not only is the kind of business done upon street railways so different from that done upon railroads as to make the application of interstate-commerce regulations to the former unnecessary, but the physical differences between the two classes of carriers render impossible such a relation between them as can ever raise street railways to sufficient importance to justify the application to them of federal control. It is not practical to operate over the ordinary street railway standard railroad cars.

The requirements of ordinary highway traffic involve the use of the same portions of the street both by street railway cars and other vehicles. This necessitates as a result the use of special kinds of rails. The flange of the standard railroad car wheel is too deep to run upon the tram rail of the street railway. Both the tread and flange of the standard car wheel are too broad and heavy to be run upon the ordinary grooved rail which is so generally prescribed by municipal authorities for the use of street railways. The "special work" of street railways—that is, the curves and switches—are particularly unfit for the use of either standard passenger or freight cars. The grades of the ordinary street railway, following as such railways usually do the grades of the highways in which they are built, are not adapted for hauling the heavy cars usual upon commercial railroads.

In all these respects street railways differ essentially from the so-called interurban electric railways which are now becoming common in some parts of the United States. These interurban railways are, as pointed out by Mr. Lincoln (p. 465 of the report of the hearings before the Interstate Commerce Committee), practically railroads operated by electricity. There may be good reasons for including such interurban railways within the federal legislation to regulate interstate commerce; indeed, there is probably no good reason for not so including them. The construction of their tracks and road bed, the character of their rolling stock equipment, both passenger and freight, the extent of their lines, the sort of business they aim to do, are all similar to the corresponding features on the ordinary railroads. The difference in motive power is incidental and not essential. Even the name "interurban" applied to such railways is almost misleading. Such a line as the projected one mentioned by Mr. Lincoln, from St. Louis to Kansas City, is "interurban" only in the sense that the Boston and Albany Railroad is interurban, in that its termini are in two cities.

The distinction between these so-called interurban electric railways, which are really railroads operated by electricity, and the ordinary street railway is almost as marked as that between the street-railway system in New York City and the New York Central Railroad or the Pennsylvania Railroad. Unfortunately, statistics are not available to show what proportion of the 38,000 miles of electric lines referred to by Mr. Esch (at page 466 of the record of hearings before the committee) represents electric railroads and what proportion represents ordinary street railways. When we remember, however, that the little State of Massachusetts alone contains over 2,800 miles of the 38,000 in the whole country and that all of those 2,800 miles are used in conducting strictly a street railway business, it is apparent that much the larger part of the 38,000 miles in the whole country are probably similarly employed.

#### STREET RAILWAY SITUATION IN MASSACHUSETTS.

Eighty-one street railway companies reported to the Massachusetts Railroad Commissioners for the last fiscal year. Fifty-nine of these companies were operating their own railways. The total mileage operated was 2,869 miles, of which all but 250 miles were located, maintained, and operated in the public highways. While the statutes of Massachusetts, as previously pointed out, have provided for the construction of electric railroads, no railroad of that kind has yet been built in the State. The freight business done upon the Massachusetts street railways is so insignificant as to be negligible. The 81 companies earned in the aggregate in the year 1909, \$31,956,007 from the following sources: Revenue from passengers, \$30,943,994; revenue from mails and merchandise, \$297,816; revenue from tolls and advertising, etc., \$714,197.

Bearing in mind that the primary object for the federal regulation of interstate commerce was to eliminate abuses and introduce uniformity in the transportation of merchandise, there is surely little reason to load down the Interstate Commerce Commission with the oversight of the Massachusetts street railways. The figures show that all these companies in Massachusetts derive

less than 1 per cent of their entire earnings in the transportation both of mails and merchandise. Their receipts from that source were actually less than half what they were from miscellaneous items of tolls, from advertising in the cars, etc.

It is confidently submitted that the negligible amount of freight business done by the street railways in Massachusetts is undoubtedly true of similar street railways elsewhere; that is, street railways in other parts of the country constructed as are those in Massachusetts—chiefly in the highways. The total number of companies—street, suburban, and interurban—based upon the proposed census report on street and interurban railways, is 1,236, and their total miles of track, measured as single track, is 34,404 miles. The total number of passenger cars is 70,016, and of all other kinds of cars, 13,625. Their total earnings from operation are \$418,187,858. Their total par value of outstanding capital stock is \$2,097,708,856, and their total outstanding funded debt, \$1,677,063,240. Their total net capitalization, based upon the same source of information, is \$3,400,107,899, giving a net capitalization per mile of track of \$100,495. That these capitalization figures are probably much in excess of the actual investment in the companies is apparent from the net capitalization per mile of track for the whole country of \$100,495. In Massachusetts, where the issue of securities by street-railway companies is strictly supervised, the amount of the capital stock at the end of the last fiscal year was \$80,738,880, and the net debt was \$75,939,932, making a total capitalization of \$156,668,812, and the net capitalization per mile of track in Massachusetts is only \$54,607, or only a little more than half that for the country as a whole.

The number of companies—street, urban, and interurban—in the so-called "Red Book, American Street Railway Investments, Edition of 1909," greatly exceeds the number given above, as based on the proposed census report. The Red Book list shows 1,603 operating companies, and 603 underlying or controlled companies; total of 2,206. The following table shows, both on the basis of the proposed census report and on the basis of the Red Book data, the small size and comparative unimportance of the average street railway (including also in the computation the interurban railways) in the United States:

*Statistics of the average street, suburban, and interurban railway.*

	On basis of proposed cen- sus.	On basis of number of companies listed in Red Book.
Miles of single track.....	27.8	15.5
Number of passenger cars.....	56.6	31.7
Number of other cars.....	11.02	6.1
Earnings from operation.....	\$338,339.69	\$189,568.38
Authorized capital stock.....	\$2,029,170.17	\$1,136,823.99
Authorized bonds.....	\$1,876,392.26	\$1,051,324.04

#### EFFECT ON INTERSTATE COMMERCE COMMISSION.

Senator Cullom, in reporting the original act to regulate interstate commerce, said, in explanation of its scope:

"The bill is not intended to affect the stagecoach, the street railway, the telegraph lines, the canal boat, or the vessel employed in the inland or coasting trade, even though they may be engaged in interstate commerce, as it would do if it was made to apply to all common carriers engaged in interstate commerce, because it is not deemed necessary or practicable to cover such a multitude of subjects."

What Senator Cullom said, looking to the future, as to the lack of necessity and the impracticability of covering such a multitude of subjects, is amply justified by the actual situation now existing. The effect of adding to the reports which the law already requires to be made to the Interstate Commerce Commission, reports of street railway companies from the number of 1236 up to, possibly, 2,206, of an average importance no greater than shown in the schedule above, must be apparent. The Interstate Commerce Commission has itself twice requested Congress to relieve it from the duty of supervising street-railway service in the District of Columbia, a duty imposed upon the commis-

sion by special act. Is anything to be gained by adding to the already heavy duties and responsibilities of that commission the supervision of this vast number of companies, engaged for the most part in conducting a purely local business, confined, so far as the Massachusetts figures show, as to over 99 per cent of its volume, to the carriage of passengers, and already in almost every State satisfactorily and thoroughly supervised and regulated by local tribunals easily accessible to the public affected and familiar with the needs of that public?

Notwithstanding the explicit language of Senator Cullom in reporting the original act to regulate commerce, the Interstate Commerce Commission has twice held that the language of that act included street railways. (*Willson v. Rock Creek Ry. Co.*, 7 I. C. C. Rep., 83; *West End Improvement Club v. Omaha and Council Bluffs Ry. and Bridge Co. et al.*, 17 I. C. C. Rep., 239.)

In the last-cited case, however, Commissioners Prouty, Knapp, and Cockrell concurred in the decision only on the ground of the decision in the earlier case, *Mr. Commissioner Prouty saying on this point*—

“In *Willson v. Rock Creek Railway Co.* (7 I. C. C. Rep., 83) I expressed the opinion that the act to regulate commerce did not apply to ordinary street railways. I still entertain the same opinion, but a majority of the commission thought otherwise in that case, and for the twelve years since we have uniformly adhered to that holding. It seems to me that this should be accepted as the settled law for this body until reversed by a majority of the commission or disapproved by a court of competent jurisdiction. I therefore concur in the disposition of the case. Knapp, chairman, and Cockrell, commissioner, instruct me to say that they also doubt upon the point of jurisdiction, but concur for the reason above stated.”

If the commissioners were right in holding that the present act applies to street railway companies, the question may be asked whether it does not apply only to such as are, in fact, engaged in interstate commerce, and whether, therefore, the vast majority of such companies would not still be solely subject to local regulation and control. In Massachusetts, for example, there are only about 15 points where a street railway either crosses the boundaries between Massachusetts and any one of the 5 neighboring States, or connects at the boundary lines with street railways operating in the neighboring States. To one unfamiliar with the decisions of the Interstate Commerce Commission and of the courts it would seem that the federal jurisdiction would apply only in these 15 instances, and that the great majority of the 81 street railway companies in Massachusetts would still remain subject only to the jurisdiction of the Massachusetts laws and tribunals. Such, however, is not the fact.

Although the Massachusetts street railways engage to such a slight extent in the carriage of merchandise, their receipts from that source being only 1 per cent of their total receipts, nearly every company does, for the convenience of its patrons, engage somewhat in transporting small packages of merchandise. Not infrequently such packages are carried on the front platform of an ordinary passenger car. If one such package is shipped from a point without Massachusetts by a street railway, or, for that matter, by railroads or by one of the large express companies, destined for delivery to a consignee upon the line of a local street railway in Massachusetts, no part of which may be within 20 miles of the state boundary, that local company is engaged in interstate commerce. The cases seem to be clear on this point, and the only method of taking such companies out of the jurisdiction of the Interstate Commerce Commission, and relieving that commission, already overburdened with more important business, from the necessity of supervising the accounts, the accidents, the safety appliances, the hours of employees, and the charges of the company must be either a declaration by Congress that legislation is not to include such companies, or a decision by the United States courts that such companies are not included, as Senator Cullom evidently believed they were not, within the terms used in the federal acts to regulate interstate commerce.

In *Leonard v. Kansas City, etc., Railway Company et al* (13 I. C. C. Rep., 573) the commission, after reviewing all the authorities, held that any carrier, even though its operations are wholly confined to a particular State, becomes subject to the regulating power of commerce if it engages in the slightest degree in the transportation of passengers or property destined from or to points without the State, and that since the Hepburn amendment of June 29, 1906, such a carrier is liable to the federal regulation, although the carriage

is not done in a particular case under any common control, management, or arrangement for a continuous carriage.

In *The Daniel Ball* (10 Wall., 557), a leading case on the subject, the Supreme Court said:

"The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction." (See also *Rhodes v. Iowa*, 170 U. S., 412; *U. S. v. Colorado Northwestern R. R. Co.*, 157 Fed. Rep., 321; *Same v. Same*, 157 Fed. Rep., 342.)

In the last-cited case the circuit court of appeals for Colorado held that a narrow-gauge railroad was subject to the penalties imposed by the safety-appliance acts, although it operated only a short line wholly within the State of Colorado, and transported goods only for an independent express company, the court holding, at pages 343 and 344:

"The railroad company did not receive, issue a bill of lading for, handle, or deliver the package, except as it received it in its car and carried it for the express company in conformity to the practice which has been described. \* \* \* The transportation by a common carrier by railroad of articles of interstate commerce for an independent express company is engaging in interstate commerce by railroad as effectually as their carriage by it for the vendors or consignors."

I have said nothing about the probable conflict between the state laws and regulations and federal laws and regulations. That such a conflict exists and will result in unavoidable confusion and dissatisfaction in many of the States is undeniable. This is peculiarly true of States like Massachusetts, which supervise their street railways very strictly and subject them not only to minute control by state officials, but also in many respects, noticeably in the matter of engaging in the transportation of merchandise, to the control and supervision of city and town officials. If good reason exists for federal control of these local street railways, the objection that this conflict will exist is not entitled to weight. If, on the other hand, there are not strong reasons for extending or continuing the jurisdiction of the Interstate Commerce Commission over such street railways, this objection, it is submitted, should influence Congress against including them within that jurisdiction. If the interests of the traveling and shipping public of the nation so require, the desires, preferences, and opinions of the citizens of Massachusetts respecting the use of their highways and the transportation of persons from one point to another on those highways and the sort of agencies which may engage in such transportation and the extent to which they may so engage not only must but should yield to the national necessity. If the necessity exists, the views of Massachusetts respecting the use of its highways, although those views are crystalized in legislation running back for two centuries or more, must be modified. Before Massachusetts, however, is called upon to submit to this federal interference with the control of its highways and the uses to which they may be put, the people have the right to ask Congress seriously to consider whether the necessity has arisen or is likely to arise.

It is respectfully submitted that the bill introduced by Mr. Townsend (H. R. 17536), now under consideration by the Committee on Interstate and Foreign Commerce, should, if enacted, contain a provision subsequential to the following effect:

"The terms 'railroad corporation,' 'common carrier,' 'carrier,' and 'transportation company' as used in an act to regulate commerce, approved February 4, 1887, as amended; an act to promote the safety of employees and travelers upon railroads, approved March 2, 1893, as amended; an act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission, approved March 3, 1901; an act concerning carriers engaged in interstate commerce and their employees, approved June 1, 1898; an act to promote the safety of employees on railroads, approved March 30, 1908; an act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, approved May 30, 1908; and in this act shall not apply to nor include a street, suburban, or inter-urban railway corporation owning and operating a railway of the class operated by electricity or by any motive power other than steam and constructed for at least one-half its length upon public highways and places, and the word 'railroad' as used in any of said acts and amendments thereof shall not apply to nor include a railway of the class herein referred to."

## II.

*If there is sufficient reason to include street railways within the act to regulate commerce, they should not be denied any of the benefits of that legislation.*

Although the freight business done upon street railways is, it is believed, negligible, always keeping in mind the distinction between street railways which are operated on highways and interurban railways, which are railroads operated by electricity, these street railways and such persons as may ship merchandise over them should not be denied the benefits intended to be conferred by section 9 of H. R. 17536. That section now contains the following exception:

"The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character." (Page 18, lines 20-23.)

If any good reason exists for this exception, it must be that the business done upon these railways is so different from that done upon railroads of a different character as to make the law applicable to the latter inapplicable to the former. If, however, such railways are to be included within the act, and Congress is thereby to adjudge that the interests of the traveling and shipping public require them to be included, Congress should see to it that that public is enabled to utilize to the fullest extent such facilities as are or may be, under federal regulations, furnished by the street railways. If the street railways and their business are to be wrested from their primary purpose of the local transportation of passengers, and, to a very limited extent, of merchandise, and brought under federal control, that control should be made effective. If there is any public demand for that federal control of street railways, and the demand is to be adequately met by legislation, the power to exercise the control should be placed in the hands of federal authorities, and not made dependent upon the voluntary act of the "railroads of a different character." It is respectfully submitted that section 9 contains among its provisions the chief reason and justification for any federal regulation of interstate commerce. If that reason and justification apply to street railways, the provisions of the section should be equally operative, both for them and against them, as for and against railroads or any other class of carriers. It is therefore respectfully submitted that the exception quoted above, and appearing in section 9, should be omitted from the bill.

## III.

*If street railways are to be included or continued under the jurisdiction of the Interstate Commerce Commission and the several acts of Congress to regulate commerce, it is submitted that they should be excepted from the provisions of section 13, as they already are from the provisions of section 12, in the bill under consideration, H. R. 1756.*

Without the exception contained in the proviso of section 12 (lines 15-18, p. 26) an intolerable situation would be produced, certainly in Massachusetts, and probably in many other States. As already pointed out, under the decisions of the federal courts practically all the street railways are, although to a very slight extent, engaged in interstate commerce. Section 12, without the proviso, would prevent the consolidation of two or more such companies in Massachusetts, for example, although such consolidations are authorized under the general laws of that State. Without the proviso the parties to any such proposed consolidation would, to protect themselves against the penalties of the acts to regulate commerce, be forced, although they had complied with all the requirements of the laws of Massachusetts, to apply to the proposed court of commerce and to submit to the delay and expense involved in such an application.

The public policy of Massachusetts, as must be well known to the Massachusetts members of the Committee on Interstate and Foreign Commerce, has long favored, first by special acts and now for more than twelve years by general acts, the merger and consolidation of street railways. This policy has resulted to the general satisfaction of the public and in greatly improved service and lessened charges for transportation. Experience has shown that it is far better to have one operating company in a city like Boston, or Worcester, or Springfield, than several struggling and competing companies. The consolidation of the small companies has been uniformly encouraged in Massa-

chusetts, subject to the supervision of the railroad commissioners, who are required to pass upon each proposed merger.

The prohibition in section 13 of the proposed act against the issue of stock and bonds will be similarly objectionable, unless the corporations operating street railways, as that term is defined in the Massachusetts laws, are excepted from its provisions. In the first place, the provisions of section 13 are entirely superfluous in many States, as, for example, Massachusetts and New York, where the issue of securities, whether stock or bonds, is carefully supervised and regulated. In the second place, that section, unless street railways are excepted from its scope, will, on the one hand, greatly add to the business of the Interstate Commerce Commission, and, on the other hand, seriously delay the necessary financing of the needs of the street railway corporations.

The committee probably does not appreciate the relative insignificance of the issues of stock and bonds by street railway companies. In the year 1906, the railroad commissioners of Massachusetts passed upon 15 separate applications of this sort, varying in amount from \$20,000 for the smallest to \$500,000 for the largest issue. In 1907 the same commissioners passed upon 25 applications, varying in amount from \$10,000 to \$1,010,900, with a single exception, that of the Boston Elevated Company, which was authorized to issue \$5,800,000. In 1908 the commissioners passed upon 12 applications, and in 1909 upon 11.

Many of the issues of stock by these companies are for the purpose of exchange for the stock of other companies with which they are consolidating. In such cases, the amount of stock which can be issued is regulated by the Massachusetts statutes, and must be approved by the Massachusetts railroad commissioners. All these cases would have to be taken before the Interstate Commerce Commission under section 13 of the bill, unless street railway companies are excepted from the provisions of that section.

In the case of an issue of bonds it is quite usual to sell them at some discount. Many companies prefer to issue a bond at a low rate of interest, although at a discount, than at a higher rate of interest, in order to make the sale at par. All these issues would likewise have to be submitted to the Interstate Commerce Commission.

When the committee recalls the fact that there are somewhere between 1,236 and 2,206 street, suburban, and interurban railway corporations in the United States, they may be able to determine which of these alternatives the Interstate Commerce Commission will adopt—either to make the supervision of the proposed issue purely perfunctory, or subject the corporation and the public desiring the expenditure of the proposed capital to an indefinite delay. Certainly no one would expect that nine human beings, charged with the supervision and regulation of the interstate commerce conducted upon 232,000 miles of steam railroads, would have much time or energy to pass upon the necessity or reasonableness of proposed stock and bond issues by this great number of street railways.

BENTLEY W. WARREN,  
*Attorney for Boston and Northern Street Railway Company  
and Old Colony Street Railway Company.*

Mr. WANGER. Now, Mr. Commissioner, will you proceed?

## STATEMENT OF HON. JUDSON C. CLEMENTS, MEMBER OF THE INTERSTATE COMMERCE COMMISSION—Concluded.

Mr. CLEMENTS. Mr. Chairman, at the time the committee adjourned or took a recess, Judge Richardson, of Alabama, had asked a question in regard to the use of valuation in connection with this matter of determining rate questions, and I had answered in a general way that I thought valuation was a very pertinent matter in the inquiry as to whether rates fixed would yield, according to the regular rule of the court, a return fair to the investors in the property, having reference to the fair value of the investment. I think it is impossible for any conscientious judge, court, or commission to get entirely away from what the people who built a railroad have put



into it, and what the property which they have built is fairly worth. From time to time, when you are confronted with the question and want to deal with it intelligently and conscientiously, you can not make its solution depend altogether on how much money was put into the road, for that money might have been improvidently spent. But a valuation of the property, the fair and reasonable value of it at the time, is a matter of great importance in considering the reasonableness of these rates from the standpoint of confiscation.

Mr. RUSSELL. Judge, should it be the value at the time of the valuation or at the time of the building of the road?

Mr. CLEMENTS. Well, that opens up the question of what you should consider. Of course, if you take into account the unearned increment and increased value of the terminal properties that were placed in there and secured thirty or forty or fifty years ago, and have been surrounded since that time by a great city, where the values have gone up, and if you add to that the difficulty and expense of procuring equal facilities from private property owners or under condemnation proceedings, where the city is built over the property that way, it would swell the value of that property a great deal. I hardly think it is a sound or fair basis that the full amount of increased value by unearned increment should be taken in the valuation. But it should be considered together with a lot of other elements in connection with the same question. Neither would I say, on the other hand, that those things ought to be altogether ignored. But in any event it will be found a helpful thing to any tribunal dealing with this kind of a problem to turn to what is the real value of the railroad, either when originally constructed or at the present time—either way. Of course it should not be final or conclusive, and it would not be the only consideration.

In connection with that is the question of regulating securities. I would not for a moment be understood as advocating the prohibition in the law against the sale of stocks and bonds at less than their par or face value when you are entering upon the construction of a new road. Money must be obtained to build it. It may be that it can be obtained from the people who are to furnish it only by taking these securities on an uncertain basis, where they might have to wait ten years for the building up of the business before there would be any earnings at all. And I do not think it would be quite fair, and I think it would tend to hamper the development of railroads in the undeveloped parts of this country, to make any such conclusive rule as that. But, on the other hand, take a gilt-edged property 35 or 40 or 50 years old, like the Alton was a few years ago, paying 8 per cent annually to the stockholders, having a capitalization of all kinds of about \$34,000,000. Then the majority of this stock was obtained by four men, and within a few years the capitalization was increased to \$114,000,000, the bonds being sold to three or four men at 65 cents on the dollar, and they selling them to themselves, or taking them themselves.

Some of those bonds turned up in a little while in one of the great New York life insurance companies which had paid 96 for them. They had a much greater value than that at which the promoters took these bonds over to themselves. The net outcome was that the road which for thirty-five years, under the management of Mr. Blackstone, the president, had been paying 8 per cent and upward annually

to the stockholders, the value of the stock being away up beyond par and its credit being unexcelled by that of any road in the country, was capitalized at \$114,000,000 instead of \$34,000,000, and only \$18,000,000 of that great overcapitalization was devoted to the improvement of the property, while the remainder of the excess capitalization was divided among themselves by the promoters. Mr. Blackstone stated in his last report before these transactions took place that he had, during the certain period of time he mentioned, perhaps twenty or twenty-five years, been able to reduce the freight rates nearly one-half what they had been, and had reduced the passenger rates as well as the freight rates. He stated that in his report, and I have no doubt in substance it was true. And yet the road was paying more than 8 per cent dividends, and its credit was fine. When the reorganization was finished up, the road had a capitalization of \$114,000,000 instead of \$34,000,000, and the profits of that recapitalization were absorbed by those promoters, first by issuing these bonds and taking them over to themselves at 65 cents on the dollar, and then disposing of a large quantity of them a little later at 96. As I say, only about \$18,000,000 from this reorganization went back into the property for improvements, and the balance of it was left as a load upon the property, to be carried by this and future generations, in order to make good the interest and the fixed charges upon these obligations and the money that was put into the pockets of the promoters, who go off and build castle homes with it and proceed to add additional millions to those already obtained.

Now, it is that kind of thing that ought to be controlled, I think, by statute for the sake of the good name of the American people, as well as for the protection of the minority stockholders and investors by trustees. How many times we have all seen people in the capacity of trustees looking out for the benefit of the widows and orphans for whom they are acting to get the best investments and safest investments. They are always looking for something safe. When a fine property like this, which has become a splendid piece of property, is developed and maintained, it becomes a most attractive bait for promoters to secure a majority of the stock and load it down and endanger its credit and endanger its ability to meet its obligations in the future and fix up a basis by which every time the rates are called in question they can go to the court and state what the fixed charges are—first, the operating expenses, and the taxes, and the money necessary to meet the interest on these obligations, which are binding upon the road. If you say they are water and illegal because the proceeds were not put into the road, and that the commission and the courts may ignore them, then what does the representative of the widow and orphan say? They say:

You stood by; you had no law forbidding this to be done; it has been done according to law, not in violation of the law; and now will the public stand for a decision which will say that the whole thing may be disregarded when the law did not forbid it, and when to disregard it is to make worthless or reduce the value of these investments which the people have put their money into? I do not think the Congress or the courts or the people of this country as a whole would stand for any such result as that.

MR. KENNEDY. The substance of it all is this: The people of this country have been represented at all times in the legislature, and the buyer of these watered stocks and bonds is the innocent purchaser,

under no obligation to look into those things, while the public is in no sense innocent. The public slept upon its rights while these things were doing, and the owner of the stocks and bonds stands higher now in equity than do the people?

Mr. CLEMENTS. Well, I think, looking at it from the standpoint of natural justice and conscience, that is what the great body of the people would say—that if these things are to be the loss should not be borne by the few people who have innocently invested in them and owned them, inasmuch as the public has had the power ever since the Constitution was framed to regulate these matters.

I am sorry Judge Richardson is not present now, because he asked a question the other day indicating that in his opinion this was wholly irrelevant to the question of rates. The importance of this matter is seen when a controversy arises on rates made by a commission, whether state or federal, and there is an effort on the part of the carriers to enjoin the enforcement of the rates. The first thing that a good lawyer representing a railroad does is to show how much gross earnings are taken by the operating expenses—65 or 70 per cent in most cases of the gross earnings go that way—and then taxes and other necessary claims upon the earnings, and then the interest necessary to meet these bond obligations and notes that have been put upon these roads. Then he is able to demonstrate that the amount available for payment of dividends on stocks is usually comparatively small. Then he has a clean-cut basis upon which to say, "When you reduce this rate, it does not leave enough for the stockholder and investor." And why? Because it has been diminished by the money taken out of the earnings necessary to meet those obligations that have been put upon the property—not to build it and not to make it better and not for any legitimate carrying purpose, but simply to get a great fund to divide out amongst the promoters, who take it away as private gain.

Mr. WASHBURN. Well, Judge, if the Alton road was the only road, for example, operating between Chicago and St. Louis, I would be impressed by what you say, but there are perhaps half a dozen competing lines between those two points, and, that being so, how do the peculiar vicissitudes of the Alton affect the freight rates, for example, between Chicago and St. Louis, in view of the fact that there are so many competing lines between those points?

Mr. CLEMENTS. All of them contend they should have substantially the same rate. As a matter of fact, the rate must be about the same.

Mr. WASHBURN. That being so, the vicissitudes of that particular road would not have much to do or much effect upon the rate between the two points, would they?

Mr. CLEMENTS. That depends upon whether all the rates between the two points are too high.

Mr. WASHBURN. In the absence of a pooling arrangement competition would naturally bring those rates down?

Mr. CLEMENTS. There is now the practice of agreeing upon rates between all important points. It is not an actual pooling of the freight, except as it may be distributed by the rates they impose.

Mr. WASHBURN. You mean they are thinking now to have that practice recognized by this bill?

Mr. CLEMENTS. Yes.

Mr. RUSSELL. The fact that the other roads might follow the example of the Alton shows the necessity of such legislation, as illustrated in the case of the Alton?

Mr. CLEMENTS. Yes. These bonds run from thirty to forty or fifty or sixty years, and the railroad has no way of getting earnings to pay fixed charges and get dividends except out of the people who pay rate charges. Of course they may refund from time to time and carry it along through a course of years, but ultimately it is an obligation that must be met some time, and it must be met out of earnings. It may be that the rates were too high when this thing was done, and there would have been an opportunity to reduce them not only on the Alton road, but also on the competing roads. I do not undertake to say whether they were or not. But Mr. Blackstone shows in his report that while the road had been for twenty-five years paying 8 per cent dividends, the freight rates were reduced one-half. Now it may be that he could have continued to do the same thing and that ultimately his road could have dropped rates still further.

Mr. WASHBURN. That was not a voluntary act upon his part? I suppose the reduction of these rates was brought about very largely by competition?

Mr. CLEMENTS. I suppose so.

Mr. STAFFORD. May I offer this observation? The Alton road had been for years what was known as a "cutthroat" railroad, seeking to extend and enlarge its traffic by reason of lower rates, so as to command its share of the total traffic between St. Louis and Chicago.

Mr. CLEMENTS. Yes. That illustrates the very point I was talking about.

Mr. STAFFORD. I thought that would emphasize the fact that when they would be prevented from higher capitalization and watering of stocks the competition between roads would thereby act as a means of leverage in lowering rates.

Mr. CLEMENTS. Yes; undoubtedly. These cutthroat-rate wars are a disadvantage to the public in some respects. They are an inconvenience, but it can not be denied that through a long period of time they have had a forceful effect in bringing down the general level of rates to a point where normal conditions would allow business to be done on the lower rate.

Mr. RUSSELL. Judge, suppose the Interstate Commerce Commission should be clothed with the right to supervise the issuance of securities by the transportation companies. How far would that conflict with the powers vested in the state commissioners to supervise the issuance of those securities? In Texas, you know, we have a state commission, and have had since 1894 or 1893. Under Governor Hogg's administration that state commission was clothed with the right to supervise the issuance of bonds and stocks of various kinds, and particularly of carrying corporations. How far would the power vested in the Interstate Commerce Commission conflict with that vested in the Texan commission?

Mr. CLEMENTS. I do not know how far, Mr. Russell, the limitation proposed in these bills would in any way conflict with the Texas law with regard to railroads in Texas. I have not really investigated it to see if there would be any conflict at all.

Mr. RUSSELL. For instance, take the Missouri, Kansas and Texas Railway Company. It is domesticated now in our State. We require the railroad companies operating in our State to take out state charters. It is known as the Missouri, Kansas and Texas Railway Company until it strikes our border line, and then it becomes the Missouri, Kansas and Texas Railway Company of Texas. Now, suppose the Texas railway commission should say that corporation can issue bonds to the extent of \$60,000 per mile, and suppose the Interstate Commerce Commission should say it should issue them only to the extent of \$30,000 a mile. Would not the decision of the Interstate Commerce Commission control?

Mr. CLEMENTS. I have not had time to work it out to see whether or not there would be an actual conflict, according to the scheme here, that the commission should certify as to the facts necessary there in order to authorize an issue of stocks and bonds. But I presume that the law would operate in a way so as not to be in conflict with the state law. It would be permissive, and if it was a state charter and a state corporation it might be that it could not go beyond the authority of the State. But I really confess that I have not undertaken to work that out and see whether it can be done without conflict or not.

Mr. WASHBURN. Let me put this case to you: The New York, New Haven and Hartford is chartered under three States, the States of New York, Massachusetts, and Connecticut. They have been asked to do certain things in the way of the issuance of securities under the laws of the State of Connecticut which are forbidden under the laws of the State of Massachusetts. Don't you think if this act we are considering were enacted into a law all of the States whose laws were less strict than this national act would have to conform to the national act, and those States where the laws are more exacting would still insist on enforcing their requirements?

Mr. CLEMENTS. I thought if these laws were passed, they could be made to harmonize in that way, and then the State could impose such additional restrictions as might be found necessary or advisable beyond those imposed by the United States Government.

Mr. WASHBURN. But no State could go beyond the restrictions required by the National Government?

Mr. CLEMENTS. Yes; that may be illustrated, I think, by the situation or the condition of court decisions before the interstate-commerce law was passed. At that time the question arose as to what was interstate and what was intrastate, and there is a line of decisions, I think, to the effect that where the Federal Government having jurisdiction of the matter has not exercised it, the state regulations would hold good and even apply to interstate business, but when the Federal Government did exercise it and went into that field, that was the rule. But I think the system of regulation can be made entirely harmonious upon the theory that the State may not authorize the issuance of stocks and bonds beyond what the Federal Government would restrict it to. Within those terms it might pursue a different rule.

Mr. RUSSELL. Wherever there was any conflict, would not the fact that the Constitution says that the Constitution shall be the supreme law of the land control the state authorities and all?

Mr. CLEMENTS. I think so.

Mr. STEVENS. Would it not be, Judge, that the effect of the act of Congress would be to restrict the authority? That is, we say this corporation can do business, providing it complies with certain conditions that we fix?

Mr. CLEMENTS. That is the theory in this bill, as I understand it.

Mr. STEVENS. While the State is the original authority, and the creator of these corporations, and fixes the conditions of their creation?

Mr. CLEMENTS. Yes; I think it can be worked out without any necessary conflict between these authorities, state and federal. But it must be remembered all the time that the provision in the Constitution of the United States conferring upon Congress the authority to control interstate commerce is unqualified and unconditional, and it was doubtless put there because it was seen during the existence of the old Confederation that it was impossible; just as impossible to have 13 or 47 States and separate sovereigns regulating these matters without conflict and injury to the whole as that they saw it was necessary to have one authority to fix import duties as well, instead of one State protecting its own industries against those of the other States. Otherwise there would be an eternal warfare, commercial and perhaps otherwise, and a few things, it was found, must be fixed by one government and not by 13 or 47, and this is one of them, conferred, doubtless, for the purpose of being exercised in the interest of the whole, so far as it relates to commerce among the States.

Now, just one more illustration of a particular instance. I refer to it, as I have done on some occasions before, not for the purpose of pointing out one road as being any worse than another, but because facts, as we have often heard it said, speak louder than words, and what has happened heretofore may happen again, and doubtless will happen again under the present law. A few years ago Mr. John W. Gates had obtained a majority of the stock of the Louisville and Nashville Railroad, and when knowledge of that fact came suddenly to Mr. Morgan, who was largely interested in the Southern Railway, or whose house was interested in it or represented those who were, he obtained at night an option from Mr. Gates, at his hotel in New York, for the stock of the Louisville and Nashville. The hearing before us indicated that Mr. Gates had begun to buy the stock at 108, its normal value at the time when he began buying it up, and the price went up and he finally paid perhaps an average of 125 or 130. He gave an option for it at 150 in sixty days. Within the sixty days Mr. Morgan had arranged with the Atlantic Coast Line management for the Atlantic Coast Line to take that Louisville and Nashville stock up, the majority of it at 150, the amount which Mr. Gates asked for it, and in order to do that the Atlantic Coast Line issued \$35,000,000 of bonds and \$15,000,000 of preferred stock, which was taken by the stockholders in that road, in that system; and with that money, with those securities, they obtained enough money to buy this stock. Without doubt there were handsome profits to Mr. Gates, ranging from the price paid, from 108 up to 130, and the price received, 150, upon these millions, and doubtless also a good compensation to Mr. Morgan's house for making this arrangement; but there was not, in consequence of it, a 10-penny nail or a car tie added to the property. That was not the purpose of the transaction. Mr. Morgan said they

did it because they did not regard Mr. Gates as a suitable or proper man to run the Louisville and Nashville Railroad.

The CHAIRMAN. Judge, there is a roll call progressing in the House. Are you through with your statement?

Mr. CLEMENTS. I was simply going to remark that that is an illustration of the necessity of controlling these matters.

Mr. RUSSELL. Mr. Chairman, I wanted to ask Judge Clements a question about the difficulty of obtaining the physical valuation of the railroad property.

The CHAIRMAN. Go ahead, then.

Mr. CLEMENTS. I do not think there is any practical difficulty about it. It will take some time and some money, but it can be done without doubt.

Now, Mr. Chairman, I do not wish to take the time of the committee unless there are some questions which gentlemen may desire to ask.

The CHAIRMAN. I think the committee will have to adjourn. There is a roll call in the House, and the Indian bill will come up right after that.

It is understood that these hearings will end to-day. If anybody else desires to present any suggestions we would be glad to have him present the same in writing.

Mr. RUSSELL. Mr. Mann, you have not pursued the inquiry made before dinner as to the Judge's opinion of the long and short haul, and neither have I. I would like to have his opinion upon that proposition.

The CHAIRMAN. Very well. He can give his opinion very briefly.

Mr. CLEMENTS. We have expressed the views of the commission, and those are my views. That is, if there is to be a change of the language, "substantially similar circumstances and conditions," or if that language is to be stricken from the fourth section, I should say that, while there should be some good reason for relieving the carriers from it, there ought to be some allowance made for the custom that has grown up under the law and recent decisions of the courts, where to reverse that matter all at once would involve quite a shock to some other places that have been enjoying the advantage of a short-haul rate for a long haul. That would be true with respect to the Southeast in particular.

The CHAIRMAN. You think that if that change is enacted into a law that it should not take effect for some time?

Mr. CLEMENTS. Yes. Where the carriers can avail themselves of having the matter considered and be relieved of the rule, they should be allowed to present the matter to the commission, and the commission should have ample time to investigate the situation in those territories so as to exercise what new power it might have in that respect in a conservative way, so as to bring about such changes as ultimately will have to be brought about by slight degrees, rather than bring them about suddenly.

Mr. KENNEDY. You spoke of giving the commission discretion to control that matter. We would have to define what discretion we would give to the commission. Have you thought about what definition would carry out substantially our public policy? I believe that to allow a foreigner to have a discriminatory rate over our own rail-

roads in the distribution of his products when we exclude our own people from that is revolutionary. It goes to the very fundamentals of the railroad service.

Mr. CLEMENTS. Well, of course, on that point I think there is a very great misunderstanding which appears to have gotten into the newspaper prints as to what the chairman of this committee and Mr. Knapp, the chairman of our commission, said the other day—that conditions under the present law were intolerable.

The CHAIRMAN. What was in the newspapers was not what was said in the committee, and it very seldom is.

Mr. CLEMENTS. We must look to the other end of that question also, from the standpoint of the people who raise great crops of wheat and corn and grain and cotton in the interior, for which this Government is seeking to give them markets abroad as well as at home. It is regarded by many as a great advantage to this country, at large that our manufacturers and farm producers of cotton and grain and all these things shall be able to get rates that shall put them into the open markets of the world in competition with other countries of production for the surplus produced in this country; and while, of course, the manufacturer in this country insists that these things of foreign production ought not to be hauled in this country at lower rates than the domestic rates, the producers of grain in the interior demand a low export rate in order that their products may compete with the markets of the world in the production of the world.

I have not anything more to add to that than what the chairman of the commission said the other day. It is a great big question, and it runs directly into your tariff system. The commission said, in the old import case which has been referred to, that it modified the operation of the tariff law, and the Supreme Court practically said that was not a matter for the commission to consider; that it was a question of policy for the legislative branch to consider.

Mr. KENNEDY. The language "under substantially similar circumstances" took away from your commission all discretion to control that matter whatever?

Mr. CLEMENTS. Yes.

Mr. KENNEDY. So that the railroads have practically been free to make any sort of arrangement for foreign shipments that they chose?

Mr. CLEMENTS. That is about what it amounted to.

Mr. KENNEDY. And in exercising that discretion they have given to the factories that chanced to be built outside of this country any sort of discrimination they please, without control?

Mr. CLEMENTS. Yes. But when you undertake to forbid it at all and then undertake to qualify it, there is difficulty in fixing the rule of qualification. That is, they only seek to do it now, I suppose, in so far as is necessary to do it in order to permit these outside products to come in in some reasonable volume. Now, if you should limit it and say they could not charge a certain percentage less than a domestic rate, that would not be of any value to them unless it was low enough to permit the stuff to come in.

Mr. KENNEDY. The quarrel I have with the present situation is this: That along the Pennsylvania Railroad in my district there are a great number of factories that established themselves and went into business along that line of railroad because they thought they would



have available that line of railroad, which would be their natural ally in distributing their wares in this country. Now, they get away from any sort of competition by the practice that they are engaged in. They contend that they are not compelled to be our ally in our competition with factories that have been built abroad for the manufacture of pottery by American capital. They would have to be our ally if those factories were built in this country along some other line of railroad, but because, forsooth, they are not in this country, but are in France or Germany, they can make a lower rate for them, practically excluding us from the markets of the Middle West in order to get their trade. Now, it seems to me that the railroad ought not to make its rates so that it can disregard the great competitive fight that is going on all over. They ought to stand as the ally of the factories along the line that were built there only because they had a railroad there.

Mr. CLEMENTS. Yes. Of course, in answer to that, they will admit it is a bad condition, but they will say, "If we do not carry the imported stuff to Chicago and to the Middle West, the Canadian railroads will, or the Illinois Central will, by means of boats to New Orleans and thence by rail to Chicago. It will get there anyhow, and we might as well participate in some of it and get a part of the business."

Mr. KENNEDY. That theory of the railroads is in conflict with the idea that we ought to enjoy these public highways on an equality, each one with every other. Judge Knapp, as I understand, does not believe in the idea that competition is the ideal way of governing rates?

Mr. CLEMENTS. No; I do not think he regards competition as of much importance as some of the balance of us do, perhaps.

The CHAIRMAN. You may proceed with your questions, Mr. Kennedy; but without objection, when you adjourn, it will be understood that the adjournment will be until the usual hour to-morrow morning, at 10.15 o'clock.

Mr. KENNEDY. I myself think that the whole theory of railroads competing is wrong.

Mr. CLEMENTS. I know a great many have that view. That is not the theory of the Government up to this time in those laws.

Mr. KENNEDY. You know that foreign railroads are managed so as to help their industries to get their products into the channels of international commerce successfully. Do you know of any foreign road that conspires with foreign manufacturers to help them distribute their goods cheaper in the railroad's own country than they distribute the products of their own domestic factories?

Mr. CLEMENTS. I really do not know how that is. I do not know of any such case. There may be such, but I am not advised of it.

Mr. KENNEDY. The German roads carry the products of the German factories down to the seaboard cheaper than they carry regular domestic freight. They make domestic distribution in their own territory, I understand. Our roads will distribute for a foreign factory under the present system cheaper than they do for our own producers here.

Mr. CLEMENTS. You mean on imports?

Mr. KENNEDY. Yes; on imports. Have you thought of any way that we could amend section 2?

Mr. CLEMENTS. You could amend it by the provision in the Mann bill that they will not charge any less contemporaneously than they do on the domestic goods.

Mr. KENNEDY. I thought it might be possible to amend it by striking out those words which take away from you control of the foreign trade and confer upon your commission the power to exercise a certain control that might seem to be in the line of public policy.

Mr. CLEMENTS. Something you mean, I suppose, that would permit the commission to allow some difference, but not as great as they make it now?

Mr. KENNEDY. Yes.

Mr. CLEMENTS. I suppose the statute could be framed that way, but of course it must be kept in mind that so long as you permit any difference, and limit that difference, it is not worth anything unless the difference be great enough to permit the outside traffic to come into this country, because that is the only reason they do it, to get a part of it.

Mr. KENNEDY. Farm produce has been carried to the seaboard over our railroads for export cheaper than it is distributed here in this country.

Mr. CLEMENTS. Yes.

Mr. KENNEDY. That might be at times in line with public policy, and at other times it might be bad policy for us to encourage the carrying abroad of any surplus. Has your commission thought of any way that we could confer upon the Interstate Commerce Commission a discretion to control that matter?

Mr. CLEMENTS. I suppose you could put into the law a provision to the effect that the difference should not be more than a certain per cent, or you could leave it to the discretion of the commission to be exercised in some way; to judge as to whether it was detrimental to the public interests of this country or not, and to permit it to exercise its discretion. Of course that would be putting a very grave responsibility on the commission to determine such a question as that.

Mr. KENNEDY. Do you think it is in line with public policy now to have meats carried abroad so that they can be sold more cheaply in London, Paris, and Berlin than they can be sold in Washington, Philadelphia, and Baltimore at this time?

Mr. CLEMENTS. Well, I doubt if it is; and still I suppose that so long as the freight rates that they charge for transportation within this country are not unreasonable, it ought not to be against the interests of this country to permit the surplus to go abroad as cheaply as it can, because our producers, whether on the farm or in the factory, are helped a good deal and the country as a whole is helped by the opening up of the markets of the whole world to take the surplus, rather than have the factories of this country shut down for one-third or one-half or one-fourth time, or because they have manufactured more they can sell in this country. A few years ago it was stated that the cotton mills of this country had put into China all the cotton goods they would need there for a year, and they were hardly able to get any orders from China for quite a long period because of that condition, and it has always seemed to me that while it looks plausible on the face of it to oppose the policy of the railroads in this country hauling for foreigners cheaper than for home people, the

least offensive part of it was the export business, by which the products go out of this country and expand our foreign market.

Mr. KENNEDY. It seems to me we would be in line with the practice of foreign roads if we carried at times the surplus farm products, or even the surplus manufactured products, and we would be helping our production by affording to them the very cheapest possible freight rate in taking their goods abroad.

Mr. CLEMENTS. If the people of this country did not pay any more than is reasonable, and the railroads can join with the ship lines in transporting goods to other countries at a rate less than they charge for domestic service, they help this country in creating a bigger surplus and disposing of it.

Mr. KENNEDY. We have a condition to-day where American capital is going abroad to build factories, partly because they can distribute their goods to the American consumer more cheaply if they make them abroad than if they are made here.

Mr. CLEMENTS. Yes; but all of that may argue that the rates in this country in respect to large volumes of the business may be too high. I do not know, but it may come from that.

Mr. KENNEDY. That is true; but is it right that pottery can be shipped from Trenton, N. J., to Rotterdam, Holland, and then reshipped and sent back across to this country to Denver, Colo., more cheaply than it can be shipped from New Jersey to Denver in the first instance?

Mr. CLEMENTS. I should say that that would pretty nearly prove that the rate from New Jersey to Denver was an unreasonable rate, if they can afford to carry it to Rotterdam and back again and load and unload it as often as it is necessary to do it. That seems to me to be an unnatural condition.

Mr. KENNEDY. They do it. Now, if the Havilands, of New York—and, by the way, they are Americans—do build their factory in New Jersey or New York, it will cost them twice as much to ship their goods to Chicago as it does to ship them from Limoges, in France. What I want is your idea of how that abuse of the American highways can be corrected without injuring any interest.

Mr. CLEMENTS. Well, in particular cases it could be done by a general law limiting the percentage of the difference that they might make on their import rate below the domestic rate; and it might be done by vesting the commission with power to deal with each particular case on the facts, with a direction in the law to guide the commission in the exercise of its discretion. I think it could be done either way. Of course there is this to be considered: The Supreme Court, in the import-rate case, spoke of the interests of the consumers in this country and of the fact that this competition from abroad tended to benefit the consumers and dealers in this country; and you run right into the protective-tariff policy of this Government, of course. You could write into this law, as the Mann bill now has it, a provision prohibiting a freight charge any less than the domestic rate. That will tend to exclude these importations to a large extent, and leave it in the power of the manufacturers of this country to demand higher prices than they now do, because you have to meet the competition of the foreign manufacturers' goods brought in on these rates. It depends on whether you look at it from a high-

protective standpoint or from a free-trade standpoint whether you think it good public policy or not.

Mr. KENNEDY. I look at it from this standpoint: If we had equal facilities over the highways that belong to us, the duty on pottery would not need to be 60 per cent. It would not need to offend against and frighten the consumer by being so high. Our 60 per cent does not put us into the Middle West as against the discrimination that the railroad makes to the American who makes his pottery in some other country.

Mr. CLEMENTS. I know it developed in the investigation of the plate-glass cases over in Pittsburg that one of the men there, who was interested in the manufacture in Pittsburg of plate glass, had built a factory in Belgium, and was operating that as well as his American plants. I should think it would be quite possible to put into the law some reasonable restraint on the degree of difference in these matters.

Mr. KENNEDY. I think it would be in the line of public policy to permit goods that are noncompetitive to come in and be distributed in this country as cheaply as they can be; but to permit the railroads to practically repeal the tariff laws when it is our public policy to encourage American productions, to have the railroads refuse to enter into and be a party to the competition of the factory along its own line—

Mr. CLEMENTS. I think that is a matter that you could control in an act by fixing the percentage limit or by vesting the commission with the duty of ascertaining what would be a reasonable limit on it, and putting the authority in there to do it. As the Supreme Court said in the import rate case, that is a question that the commission, as a rate matter, has nothing to do with, and it is a thing that should be directed to the legislative department of the Government. You gentlemen determine what the tariff ought to be, and what its purposes are, and how far they are to be carried out, and you have this very question closely related to it as to how far you will permit that to be modified by the freight rates.

Mr. KENNEDY. Here is the way the problem presents itself to me: I have quite a number of factories along the Pennsylvania lines. They have no means of distribution except the Pennsylvania lines.

Mr. CLEMENTS. Yes.

Mr. KENNEDY. They want to compete with Borgfeldt, who has built his factories in Germany. Borgfeldt can ship through New Orleans, he can ship through Charleston, or from Baltimore. He has available for his shipments many lines. My factories have but one, the lines of the Pennsylvania Company. Now, should the Pennsylvania Company be allowed to cut us off—eliminate us—from this great productive problem, and say "We will not help you. The thousand tons of pottery that you would like to ship to the Middle West we will get from Mr. Borgfeldt, in Germany, if we make a low enough rate?" Mr. Borgfeldt has 3 or 4 other lines to carry his pottery. Why should not the Pennsylvania Company be our ally for the purpose of entering into that competitive problem?

Mr. CLEMENTS. That goes to the whole question how far you will restrain them in their liberty under the present law.

Mr. KENNEDY. Are they harmed? They were chartered to take care of the traffic of that neighborhood. Why should they be ex-

cused from that duty as a public carrier, and go off into a fight for other traffic that does not need to come that way?

Mr. CLEMENTS. Well, what they would say to you would be this: "So long as we do not charge you any higher rate than is reasonable for the service rendered, you are not hurt when we simply haul some of this foreign stuff to Chicago for a less amount than we haul yours; because if we do not do it they get it there anyhow at the same cost."

Mr. KENNEDY. But if they are not hauling the foreign stuff way below the cost of transportation itself they are charging us a robber's price.

Mr. CLEMENTS. That may be.

Mr. KENNEDY. Should not thoroughgoing regulation and control of the railroads contemplate the power somewhere to put an inhibition upon these public servants from carrying below cost?

Mr. CLEMENTS. Well, the commission has decided now that any rate below cost, carried for one person, is a discrimination against other people, because that must necessarily add a burden on somebody else. The difficulty is in finding out what is cost. But you could put a rule into the law that where a carrier does participate in this import traffic it will be conclusively presumed that that covers cost. That would fix a measure as to how high the domestic rate might be if the one yields cost and something more, because it is to be presumed that they will not long carry unless they get not only cost, but something in addition; and if they do that on the import stuff it might prove their domestic rates to be unreasonably high.

Mr. STAFFORD. On the question of express charges, I would like to ask your opinion. I would like to ask whether the attention of the commission has been called to the tendency of the express companies to merge into two or three companies that will cover the entire country?

Mr. CLEMENTS. Well, I think there has been a tendency all the time toward the concentration of these different lines of business into the hands of fewer and fewer. It is so with the railroads as well as the express companies.

Mr. STAFFORD. I understand that it is the policy of the commission at present to approve of competition among existing railroad carriers?

Mr. CLEMENTS. We regard that as the policy of the law.

Mr. STAFFORD. Is there any competition at the present time, or has there been in recent years, between the various express companies operating over the various railroad systems of the country?

Mr. CLEMENTS. Well, speaking in a general way, I think there has been very little actual competition between them. There may be some.

Mr. STAFFORD. Has there been any general reduction of their rates?

Mr. CLEMENTS. You know we knew very little about the express rates until after the Hepburn Act was passed, and it was some time after that before we could get their rates filed. They were not required to file them with us, and we had no law requiring them to be filed with us until after the passage of the Hepburn Act; and then it was a long time before we could get their rates in shape, as a practical matter, and before they could get them in shape to file them

with us. So our knowledge of the charges of the express companies is limited to a comparatively short time.

Mr. STAFFORD. In those cases of express company charges that have been brought before the commission for review, have they represented general commodities, or are they limited to single cases?

Mr. CLEMENTS. Most of the cases have been rather small cases—that is, single commodities between certain points; but we have had some rather large cases; for instance, in the East to Arizona Territory.

Mr. STAFFORD. But the general subject of whether the express company charges as a whole are unreasonable has not been brought to the attention of the commission for adjudication?

Mr. CLEMENTS. No, sir; you know the law which confines us to the investigation of these matters on complaint and hearing rather confines us to the four corners of the complaint.

Mr. STAFFORD. But under the phraseology of the Mann and Townsend bills the commission will be given authority to initiate an inquiry and pass upon those charges if they believe they are unreasonable.

Mr. CLEMENTS. But you understand that would give us a much wider scope of investigation and determination in respect to the whole situation that would be involved.

Mr. STAFFORD. Has the commission considered in any of its deliberations whether it is possible to have competition among the railroads in handling express business?

Mr. CLEMENTS. Well, I suppose there is just about as much competition between the express lines over the different roads in trying to get business from one territory to another as there is between these systems of railroad in respect of that matter, because, as a practical matter, from one territory to another there have been for a long time these agreed arrangements between the respective lines that get together and confer.

Mr. STAFFORD. I have understood that for many years—for twenty years, in fact—it has been characteristic of the whole development of the express-company business that there has been an understanding whereby they have parceled out the business over different railroad companies to individual express-company lines, and that there has not been any competition to speak of.

Mr. CLEMENTS. I think the tendency is that way. You see it by the lines over which the respective express companies, the leading ones, conduct their business.

Mr. STAFFORD. Do you know, as disclosed from the hearings or from investigations, the reason why the railroad companies are receiving a higher percentage of the gross receipts to-day—it generally being 55 per cent—whereas back twenty years the return that the railroad received of the gross receipts of the express company's business was 40 per cent?

Mr. CLEMENTS. It seems to me that in several cases that have come to my own knowledge recently the arrangement between the railroad company and the express company was that the railroad should have 45 per cent. There may be, and doubtless are, other bases of dividing the charges.

Mr. STAFFORD. It has been stated here in hearings, and I believe Commissioner Knapp approved it, that the usual percentage at present is 55 per cent of the gross receipts.

Mr. CLEMENTS. To the railroad?

Mr. STAFFORD. To be turned over to the railroad; whereas in the first express-company case that was passed upon by the commission in 1887 it was stated there by Commissioner Walker that the usual percentage that the railroads received was about 40 per cent.

Mr. CLEMENTS. Well, now, I would not want to make a positive statement of the averages or of the general proposition without looking a little further into that, because recently I have had a matter up where the Southern Express Company and the Adams Express Company were involved in a matter on a shipment from Carolina points where, as I remember, the allowance to the railroad was 45 per cent.

Mr. STAFFORD. Under the old agreements it was 45 per cent, but recently new agreements have been entered into. For instance, in the arrangement between the Chicago, Milwaukee and St. Paul Railroad and the Wells-Fargo Company, which has just recently taken over the business, I believe, of the American Express Company in that system, the railroad receives an aggregate amount of 55 per cent of the gross receipts; and from newspaper reports it is stated that the new express company immediately raised its rates so as to meet the higher percentage of charge paid to the railroad company.

Mr. CLEMENTS. Well, you may be quite right about it in regard to those western express companies.

Mr. STAFFORD. Of course the merchants of the country are generally criticising the high charges paid to the express companies, and it is a matter of general knowledge that the express companies are earning very large dividends and are in some instances, to use a popular phrase, "cutting melons" for distribution among their members.

Mr. CLEMENTS. I have seen such statements as that in regard to the distributions they make. Of course the investment in the express company is very limited as compared to that in the railroad company. It may be that their profits are very high on the amount of money that they put into the investment.

Mr. STAFFORD. Under the phraseology of these bills as you construe them, will the commission have the same authority to pass upon the reasonableness of the rates of the express companies as they now have with reference to the railroad carriers?

Mr. CLEMENTS. I would understand it so.

Mr. STAFFORD. From your experience on the commission and from your acquaintance with railroad traffic, do you believe it is possible to have competition in the carriage of express matter by the railroads?

Mr. CLEMENTS. Do you mean between the express companies and the railroads, or by the railroads engaging in it?

Mr. STAFFORD. No; for the railroads themselves to handle the express freight on their own individual lines just as they are handling the excess baggage of commercial travelers on their passenger and express trains.

Mr. CLEMENTS. I think it would be quite possible for them to indulge in this just as far as they do in regard to carrying what is called freight. One protest that is made by some of the representatives whom I have heard on the outside—not in any formal case, perhaps, but the point is made from time to time—is that the lower you get the express rates the more of the small freight you will move by express, and between the large centers and territories in this country the express cars will multiply and will become an embarrass-

ment to the railroads in hauling them on their passenger trains. think they transport express cars from New York to Chicago in trains.

Mr. STAFFORD. Either in trains consisting solidly of express cars or express and mail cars.

Mr. CLEMENTS. Yes.

Mr. STAFFORD. The development of traffic must necessarily be, in the densely populated districts where there is great demand for free intercourse of business, to have more and more express trains.

Mr. CLEMENTS. Yes; and it breaks up again for distribution close to a center like Chicago, and is carried largely on passenger trains—one or two cars. Their point is that the lower you get the freight rates the more of it there will be and the more it will embarrass their passenger business. But I do not, of course, regard any such reason as that as a good reason to uphold rates that are unreasonable; it does not matter what it takes in the way of facilities to do the business.

Mr. STAFFORD. It is recognized, on grounds of public policy, that there is a certain character of small-package freight that it is necessary, for the best business interests, shall be dispatched as expeditiously as possible.

Mr. CLEMENTS. Yes.

Mr. STAFFORD. And that the railroad companies, as common carriers, will provide means whereby that character of freight shall be transported as quickly as possible.

Mr. CLEMENTS. I think it is the duty of the common carrier to do that. Many of the packages must be carried in that way because of the extra care that is necessary in order to keep from mislaying them or losing them because they are small.

Mr. STAFFORD. My attention has been called recently to the practice of some of the express companies and railroads requiring small packages to be bulked in large trunks, where they are for dispatch to some certain place, thereby relieving the express company and the carrier of the annoyance of handling separately little packages by having them bulked in one large trunk for delivery at one certain place.

Mr. CLEMENTS. When they are shipped by different people or to different people?

Mr. STAFFORD. When they are sending out packages by express companies.

Mr. CLEMENTS. By numerous consignors to numerous consignees?

Mr. STAFFORD. By numerous consignors to numerous consignees; yes.

Mr. CLEMENTS. I am not familiar with that rule; but the railroads, you know, require that each shipment shall be separate. That is a matter that is in controversy between the commission and the railroads in court, as to whether they can require separate shipments or not.

Mr. STAFFORD. I am very much obliged to you, Mr. Commissioner.

Mr. KENNEDY. I guess that will be all.

Mr. CLEMENTS. Very well. I understand that I am excused from further attendance.



Mr. KENNEDY. I think that is the idea. We are very much obliged to you and to the other members of the commission.

The CHAIRMAN. The following letters and suggestions may be inserted in the record:

CEDAR RAPIDS, IOWA, *February 18, 1910.*

HON. ELBERT H. HUBBARD,  
*Washington, D. C.*

DEAR SIR: At a meeting of the board of directors of the Cedar Rapids Commercial Club, held Monday, February 14, the following resolution was unanimously passed:

"*Resolved*, That the Cedar Rapids Commercial Club heartily indorses the statement and argument of Mr. S. K. Cowan, attorney for the American National Live Stock Association, made before the Committee on Interstate and Foreign Commerce, House of Representatives, on February 8, 1910.

"We believe that the proposal to take from the commission all responsibility respecting the defense of its orders, leaving it only where attorneys appointed by the Department of Justice will appear in such cases in court, is a gross injustice to the interest of all shippers and the people in depriving them of their rights to have the Interstate Commerce Commission, after making its orders, charged with the responsibility to put them in effect, from employing the means which it deems best; and, further, that the specific right of shippers to appear in any court involving the validity of the orders of the commission made in behalf of such shippers should be provided for in the law.

"We heartily approve of Mr. Cowan's suggested amendment, on pages 14 and 15, as representing a fair and just provision to accomplish such purpose, feeling that such provisos will mean the equity which both the shippers and commission are entitled to; and be it further

"*Resolved*, That the Secretary is hereby instructed to communicate the foregoing to all Representatives and Senators from Iowa, requesting their support."

Will you kindly give this a favorable consideration at the proper time, and advise?

Yours, very truly,

JOHN WUNDERLICH, *Secretary.*

P. S. Copies of Mr. Cowan's arguments can be had on application to Hon. James R. Mann, chairman of the House Committee on Interstate and Foreign Commerce.

OKLAHOMA CITY, *February 18, 1910.*

HON. JAS. R. MANN, M. C., *Washington, D. C.*

DEAR SIR: This will refer to my former letter of February 11 on the subject of the interstate commerce court. I have had a communication from Judge Cowan in which he points out the fact that the court proposed in the Townsend bill is different from that which the shippers generally wish to have organized.

I think that on the whole there is very little difference of opinion between Judge Cowan and myself on this matter. Unless the court is to be composed of men especially qualified to deal with subjects involving transportation, at least a minority of them preferably selected from the present membership of the Interstate Commerce Commission, and unless they can either sit permanently at some central location, or, like the Interstate Commerce Commission itself, have hearings at various points to suit the convenience of the great masses of people who have cases upon appeal, and unless the court would be given exclusive jurisdiction of injunction proceedings against state transportation commissions and legislatures on transportation propositions, I do not see that it would be of much benefit to the shippers. On the contrary, I believe that it would be more of a menace than anything else.

We are opposed to the centralization at Washington of any more of the instrumentalities pertaining to regulation and control of interstate commerce, fully believing that matters of this kind are somewhat different from legislative affairs, and the shippers' means of redress should be brought as near to the center of population as possible. Either Chicago or St. Louis would be far preferable to Washington.

If this court is not going to be of any benefit, we can see no particular reason why the additional expense of its creation should be incurred.

Respectfully, yours,

J. H. JOHNSTON.

SHORT LINE RAILROAD ASSOCIATION,  
New York, February 21, 1910.

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: The short-line railroads, numbering more than 500 roads, with a mileage of less than 100 miles each, represented by the Short Line Railroad Association, earnestly appeal to your committee to modify the exactions imposed on the short-line roads under the interstate-commerce law as applied to printing the tariffs of these roads. Under the act all railroads are required to file printed schedules. This imposes a heavy expense on the little roads, which they are illy able to bear and should not be forced to bear, particularly as a majority of them run wholly within one State. The principal cost in printing is composition and make ready; it is therefore plain that 10 or 20 copies of the printed tariffs of the short-line roads cost them within a fraction as much as 500 or 1,000 copies cost the longer or through lines. The expense incurred by the short lines in this particular is out of all proportion to that which they are entitled to pay. It aggregates with them more than a million dollars a year.

In view of this, as no public benefits arise from the particular form prescribed by the law in publishing the tariffs, as applied to short-route roads, we suggest that section 6 of the interstate-commerce law be amended so as to permit the commission, in their discretion, to allow typewritten, mimeograph, or hexograph schedules to be filed in lieu of those printed.

Trusting you will fully consider this matter and bring it to the attention of your honorable committee, we remain,

Yours, very truly,

SHORT LINE RAILROAD ASSOCIATION,  
By JOHN A. DRAKE,  
*Secretary and Treasurer.*

WASHINGTON, D. C., February 21, 1910.

HON. JAMES R. MANN,  
*House of Representatives, Washington, D. C.*

MY DEAR SIR: While not connected at this time with the limited question before you relating to water lines, namely, bearing of section 9 of the proposed act known as administration measure, there is a point that I would like to lay before you, as a representative of the people, which does have a very great bearing on the present question.

There is, I believe, a simple and direct plan to enact a law which will settle this whole controversy in the interests of the people, will preserve their water lines from railroad domination, and will leave them free under the natural laws of trade to perform their great duties in rate regulation. The plan, I think, is worthy of consideration, at least as a suggestion, and I think something of great importance may grow out of it in simplifying the question and in reaching what the people and their representatives demand. This, of course, is only limited to that portion of the commerce act which has any relation to water carriers.

I know your time is limited and you are very much overworked, but before the matter of the proposed administration bill is settled I thought you might like to have this other matter before you, and you could determine whether it is wise at this time to inject it. My own view is that at this session it is best to leave the water lines in statu quo by restoring the omitted clause and aiming to prevent possible repeal of the marine statutes, and adding definitive language in keeping the water hauls of the water lines at least temporarily free and independent; to give them, as it were, a breathing spell, in order that we may intelligently, carefully, and effectively put on the statute books comprehensive measures to preserve equilibrium between water and land carriers.

I think the suggestion I would like to offer to you as a representative of the people would at least have the virtue of simplicity, and, after a full consideration of all the light that can be gotten on it, perhaps efficiency in accomplishing the fullest purpose the people demand.

I write this to you in your personal capacity as a representative of the people, and not as chairman of the Committee on Interstate and Foreign Commerce. If you think there is any virtue in the suggestion, you will know best whether

it ought to come before the committee or not at this time. What I fear is that too much suggestion may cloud the situation rather than clear it, and if the water lines can be let alone at this session it gives a ripe opportunity to propose something adequate at the next session.

I know you have taken quite an interest in transportation matters and, as it is one of your specialties, I thought this would be the best method of getting the matter before the other representatives interested in such legislation.

Believe me to be, my dear sir,

Respectfully, yours,

DANIEL H. HAYNE.

#### ADDENDA.

House bill 17536, has just been changed to House bill 21232. Please consider the word "character," located on sixth line of page 20 of House bill 21232 in reading this brief.

#### SUPPLEMENT TO BRIEF FILED IN BEHALF OF WATER CARRIERS, WHICH SEE FOR FULLER EXPLANATION.

Amendment proposed: After the word "character," page 19, line 10, of S. 5106, and page 18, line 23, of H. R. 17536, insert: "And provided that this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists, but this shall exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carriers' water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water."

The object of this amendment is:

1. That the water lines' local traffic may not be subjected to the risk of artificial regulation except where no reasonable or satisfactory through route exists.

2. That there be no doubt that the Revised Statutes of the United States, limiting risk at sea, are not repealed.

3. That the possibility of mistake in construction may be removed by definitive language protecting the local traffic of water carriers.

It being admitted no change of status quo, with regard to water carriers, is intended, this amendment is suggested to remove all doubt which has been expressed on the effect of S. 5106 and H. R. 17536.

The section of the present interstate-commerce act and the proposed amendments in Senate bill 5106 and House bill 17536 relating to water transportation.

(The words in italics show the parts of the act to which reference is made.)

Extract from section 15 of the present interstate-commerce law:

"The commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, *provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.*"

Extract from section 9 of the proposed amendments to the interstate-commerce law, known as Senate bill 5106 and House bill 17536:

"The commission may also, after hearing on a complaint, or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; *and this provision shall apply when one of the connecting carriers is a water line.* The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character."

The following words are omitted from above section 9: "*Provided no reasonable or satisfactory through route exists.*"

The above extract from section 9 of Senate bill 5106 and House bill 17536, amended as proposed herein, would read as follows:

"The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged, and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classification or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character: *And provided, That this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists; but this shall not exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carrier's water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.*"

(The proposed amendment is shown in italics.)

(The committee thereupon adjourned.)



















# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XXIII

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman*.

IRVING P. WANGER, PENNSYLVANIA.

FREDERICK C. STEVENS, MINNESOTA.

JOHN J. ESCH, WISCONSIN.

CHARLES E. TOWNSEND, MICHIGAN.

JAMES KENNEDY, OHIO.

JOSEPH R. KNOWLAND, CALIFORNIA.

WILLIAM P. HUBBARD, WEST VIRGINIA.

JAMES M. MILLER, KANSAS.

WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.

CHARLES G. WASHBURN, MASSACHUSETTS.

WILLIAM C. ADAMSON, GEORGIA.

WILLIAM RICHARDSON, ALABAMA.

CHARLES L. BARTLETT, GEORGIA.

GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.

## BILLS AFFECTING INTERSTATE COMMERCE.

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The CHAIRMAN. The following letters and suggestions may be inserted in the record:

CHICAGO, January 4, 1910.

Hon. JAMES R. MANN,  
*House of Representatives, Washington, D. C.*

DEAR SIR: This company is one of a number of Chicago business concerns which met on the 29th of December and drew up a joint letter, which was sent to you, a copy of which is inclosed. We wish to make an individual appeal to you.

Owning and operating a great many plants in this country, five of them in the State of Illinois and two of them in your own congressional district, we feel that we have mutual personal interests in these two plants, and therefore we beg to advise you that since November 1, 1907, these two plants, employing 1,000 men, have been absolutely closed, and the men all idle; that recently we started up about 20 per cent of the capacity of these plants, hoping that by next year we would have them running full blast. We regret to say that at present we have no such hope. In fact, we doubt our ability to even keep them running at this limited capacity for more than two or three months. We attribute the cause as entirely due to the alarm with which the financial public view the future earning capacities of the railroads. With ever-increasing demands of their employees, which if satisfied would reduce their earning capacities very materially, with all of the adverse railroad legislation now in vogue, and with threatenings of a vast amount more in sight in the coming Congress, it is not to be wondered at that railroads should buy absolutely nothing but that which they are compelled to, and here is where it affects us, and already we feel the conditions of 1907 repeating themselves.

We believe that you can do the men whom you represent in general, and us in particular, a great deal of good by opposing this ever-increasing and hasty congressional action concerning railroad operations. We do not ask you because of our love for the railroads, but we are asking you for ourselves, because we are really the ones who are suffering most from this excessive railroad legislation.

The subject is too great to be confined in a short letter. We would gladly give you more definite reasons, but in the meantime we would ask you to please take our word for the situation, and use all the effort you can to hold back this senseless rush, at least until we have time to recover from the last assault.

Believing and hoping that this will meet approval at your hands, I remain,

Yours, very truly,

Griffin Wheel Company,  
By T. A. Griffin, *President*.

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DECEMBER 29, 1909.

DEAR SIR: At a meeting held this day it was voted that we present for your consideration some facts, from our point of view, concerning newly proposed railroad legislation. We are all manufacturers, doing business in Chicago, many of our factories in your district, representing thousands of employees.

In the outset we wish to disclaim any desire to ask favors for ourselves or for the railroads; all we want is justice. The Federal Government and the state governments have passed many laws for the regulation of railroads, and other laws will be proposed, and some of them will be adopted. We admit the necessity of wise regulation of railroads by the nation and by the States, and if such wise regulation seems to injure us or our employees we will submit.

The particular subject to which we ask your attention is the revision of the interstate commerce law, which it is thought will, within a few days, be recommended by the President. Should one of the President's recommendations be that the railroads

shall not make any changes in their tariff rates until the Interstate Commerce Commission shall have given its approval, we dread the effect which this might have on general business.

We must do everything in our power to avoid a recurrence of the business stagnation which began in the fall of 1907 and continued for nearly two years. During that period many of our men were out of employment and the remainder worked only part time. Many manufacturing establishments in your district and elsewhere were idle. We believe that the business depression referred to was caused entirely, or almost entirely, by the feeling of antagonism which existed two years ago toward the railroads. We are not here to excuse the railroads for their faults, and we know they had many. We believe the railroads have made unusual efforts during the past two years to remove the causes of public dissatisfaction; they have accomplished much in that direction; they are still trying, and we believe will continue to do so.

At the present moment there is a second decrease in railroad purchases; we feel it in our business, and some of us are again reducing our output and laying off men. We think this is the result of the present agitation of further railroad legislation, especially the fear that the rate-making power is to be taken from the roads.

We ask that very careful consideration be given the subject before any additional regulatory laws are passed, to the end that nothing may be done to check the continuation of the business prosperity which commenced a few months ago.

We have not undertaken in this communication to set forth in detail our reasons for objecting to taking the rate-making power from the roads, as that subject, and others, is treated in a letter dated October 27, 1909, addressed to the Attorney-General by the Railway Business Association, of which most of us are members, and of which letter a printed copy is attached hereto, and to which we ask your careful attention.

We wish to impress upon you the seriousness of the situation to us as employers of a large number of men, and request you as our Representative to do everything in your power to oppose the passage of any law that will take from the railroads the power to initiate or originate rates.

Yours, respectfully,

American Radiator Company, Adams & Westlake Company, Ajax Forge Company, American Steel Foundries, By-Products Coke Corporation, Block-Pollak Iron Company, Blue Island Car and Equipment Company, Buda Foundry and Manufacturing Company, Camel Company, Chicago Bridge and Iron Works, Chicago Pneumatic Tool Company, Jas. B. Clow & Sons, Fairbanks, Morse & Co., Federal Furnace Company, Featherstone Foundry and Machine Company, Griffin Wheel Company, Hewitt Manufacturing Company, Hickman, Williams & Co., Edward Hines Lumber Company, Robt. W. Hunt & Co., Joyce-Watkins Company, McCord & Co., Morden Frog and Crossing Works, Niles-Bement Pond Company, Pettibone, Mulliken & Co., Pickands, Brown & Co., Pneumatic Gate Company, Rodger Ballast Car Company, Sellers Manufacturing Company, Standard Forgings Company, United Supply and Manufacturing Company, Railway Steel Spring Company, Guilford S. Wood, Chicago Railway Equipment Company, W. H. Miner Company.

RAILWAY BUSINESS ASSOCIATION,  
New York, October 27, 1909.

HON. GEORGE W. WICKERSHAM,

*Attorney-General United States, Chairman Committee Appointed by  
President to Recommend Changes in Laws Regulating Interstate Commerce.*

DEAR SIR: At the request of the Railway Business Association for an opportunity to lay before your committee our views as to railroad legislation, you have indicated a willingness to present for the consideration of the committee any written statement we might submit. We will confine our suggestions at this time to one subject, namely, the proposal suggested tentatively for discussion by the President of the United States in an address at Des Moines, Iowa, on September 20, to confer upon the Interstate Commerce Commission power to postpone freight-rate increases until final hearing and adjudication by the commission as to their reasonableness. To this legislation our association is opposed, not because of any lack of confidence in the personnel of the present Interstate Commerce Commission, for whose ability, experience, industry, and integrity we have the highest respect, but because we believe the proposal to be fundamentally and economically mistaken and fraught with injury to the country.



We beg to remind you that our position is by no means only that of industries seeking to shield our customers, the railroads, from attack. We do not seek to represent the railroads, nor are we authorized to do so. We appear in our own interest.

Industries dependent upon railroad purchases employ 1,500,000 men. The members of our association, though only a part of the whole, represent a capital invested exceeding \$500,000,000. Injury to our customers by unwise, unfair, or unnecessary legislation is damaging to our employees and to those whose investment of money has made the industries possible. With us wisdom in railroad regulation is a business necessity. Nor should it be forgotten that we pay freight bills aggregating millions annually and are as much interested as any other class of shippers in having rates reasonable and equitable.

Our position is not one of general obstruction to all measures affecting railroads. We admit the necessity of and believe in the desirability of their regulation. Furthermore, our attitude being more friendly than critical toward the railroads, we hope our influence with them may help in their task of meeting the reasonable desires of their patrons. The problem, as we conceive it, is to establish such regulation as will make the railroads efficient and adequate agents of transportation and maintain equity between shippers and carriers. It is in this spirit that we now offer you our views.

As reported in the press dispatches, President Taft's Des Moines speech contained the following:

"Under the interstate-commerce law a new rate classification is to be filed with the commission. It is proposed now to authorize the commission to postpone the date that such new rate classification is to take effect. This introduces a new element into the act by placing the railroad company in the situation when it proposes to make a change in the rate that it should be prepared to show to the commission affirmatively that the change to the new rate is justified.

"I am inclined to think that this is a fair change in the provision of the law. It gives to the public the same right to have changes which affect them injuriously investigated before they go into effect as it does changes of rates by the railroads by appeal to the courts to have the order of the commission subjected to investigation and hearing. Railroads ought not to be permitted to change rates unless they can give a reason for it."

It is our opinion that of all the proposals affecting railroads now seriously considered none is more dangerous than this. The proposed clause, if it accomplished the purpose defined in the above quotation, would absolutely deprive the railroads of the power to make rates.

A careful study of the debates in both Houses of the Fifty-ninth Congress, preceding the enactment of the Hepburn bill, throws important light upon the subject. The proposal was to give the Interstate Commerce Commission power to investigate on complaint a scheduled freight rate and to declare it unreasonable if so found. Such a decree automatically mulcted the carrier to the amount unlawfully taken from the shipper, with interest.

It was contended by some opponents of the bill that in effect it would take away the right that should inhere in the carrier to initiate rates. In answer to this, and in defense of the bill, it was argued, and as events have shown, rightly, that the bill did not take from the carriers the power to initiate rates, because it explicitly authorized the carrier to fix the rate, which went into effect and so remained until the commission declared it unreasonable.

President Roosevelt, in his message of the preceding December, had said:

"My proposal is not to give the commission power to initiate or originate rates generally, but to regulate a rate already fixed or originated by the railroads, upon complaint and after investigation."

In debate many Senators and Representatives favoring the bill declared themselves opposed to any attempt to rob the carrier of his initiative as to rate making, and upon their assurance that it did not do that they asked support for the bill. The whole debate was replete with asseverations by those advocating the measure that the initiative as to rates properly belonged to the carrier. Senator Lodge, of Massachusetts, quoted from a circular sent out by Edward A. Moseley, secretary of the Interstate Commerce Commission, 1899, upon authority vested in him by resolution of the commission, in which occurred the following:

"The commission neither asks nor desires to be invested with general rate-making power. It simply asks for authority to correct rates which have been previously established by the carriers in the full exercise of their rate-making power, when such rates are found by the commission, after due notice, investigation, and full hearing, to be in violation of the act."

It would seem that the right of the carrier to initiate rates was preserved and specifically sought to be preserved in the Hepburn bill by the provision that only after a rate had been initiated, filed, and effectuated by tolls collected could a complaint be entertained and a decree of unreasonableness issued. It is just here that the

proposition now advanced differs fundamentally from the Hepburn Act. How can the right of initiative be preserved if, as discussed in the President's Des Moines speech, no rate filed by the carrier can become effective until the commission has given its consent? If the commission, in its discretion, may postpone the effectuation of a rate, not by investigation of complaint and decree upon the merits, but merely treating the complaint as a *prima facie* cause for vetoing such initiative, pending the convenience of the commission in reaching a final conclusion, how can it be said that the carrier has power to make rates? Instead of sustaining the power of the carrier to initiate and establish rates, a law such as is proposed would merely grant to the carrier the prerogative of suggesting a rate for the consideration of the commission.

How can anyone who in 1906 declared against depriving the railroads of their power to fix rates support now a bill to give the power of postponing rates to the commission?

While the Hepburn bill was careful to give the shipper ample protection against any overcharge improperly collected, with interest, no protection is proposed or could be proposed for the carrier as a provision of the suggested change in the law. If the carrier can not collect the rate fixed by it until somebody has approved it, the carrier has certainly not initiated it. If, having fixed a new rate, the carrier must continue to collect tolls at the old rate until it is permitted by the commission to effectuate the new one, and such effectuation has been finally decreed by the commission, has not the carrier been mulcted out of the difference during the period of suspension? Has it not had earnings taken away to which it was entitled, as shown by the approval of the commission, without any possibility of their recovery?

The carrier having, by intervention of the commission, lost a sum of money which that body subsequently decided the carrier ought not to have lost, there is no power to secure this money from those who should have paid it.

The chief ground on which it was urged in Congress that the railroads should retain their power of rate making was that such retention of power by them was in the public interest. Representative Mann, of Illinois, now chairman of the House Committee on Interstate and Foreign Commerce, said in debate:

"The power to fix generally absolute rates is the power to destroy competitive forces, to paralyze industries, to injure railroads, to interfere with all of the principles and methods of modern business life."

What we have said relates to the general policy of permitting the carrier, as a matter of good business for all concerned, to initiate every rate. What has been contended above is that it would be a mistake to give the commission power to veto a new rate before it goes into effect, even if the decisions of the commission could be promptly rendered. We are convinced, however, that the practical evils following bestowal of this power would be vastly greater than the theoretical; for in the nature of things, the decisions would be delayed, in many cases indefinitely, owing to the inability of any commission to dispose promptly of so many protests as would certainly be filed.

Is it not certain that when money could be saved so easily as by a mere protest, every advance would be protested by somebody? Not even so hard working and well organized a body as the present commission would be able to give more than cursory preliminary examination to each protested rate, and to avoid criticism would be obliged to treat all alike by postponing all. The railroad would thus find itself unable to raise any rate without having first presented its case at a hearing. Thus the rate-making power as affects increases would be taken from the hundreds of traffic officials all over the country whose specific business, each in his own jurisdiction, is making rates, and given, under conditions that would make promptness and dispatch impossible, to the commission, who, even when possessed of as long experience as several of the present members, could only hope to give direct attention to a limited number of concrete industrial situations.

We do not believe it is desirable that such powers of obstruction should be vested in the shippers (of whom we are an important part) when the records for sixteen months after the passage of the Hepburn Act show that out of 5,952 complaints lodged with the commission, 2,105 were outside the jurisdiction of the commission, 3,374 were of such a nature as to require only correspondence or conference for their disposal (half of them being settled without hearing, the other half being dismissed), while the 473 complaints remaining were being decided at the rate of 155 in favor of the railroads to 86 in favor of the shipper, or a final result of less than 3 per cent of all in favor of the shipper.

The chairman of the Interstate Commerce Commission itself, on behalf of that body, in a letter dated January 29, 1908, and addressed to the United States Senate Committee on Interstate Commerce, said:

"If every proposed advance had to be investigated by the commission and officially sanctioned before it could take effect, the number of cases to be considered would presumably be so great as to render their prompt disposition almost impossible.

"It is further to be observed that the passage of such a bill at this time would impose a burden upon the commission which it should not be asked to undertake.

"In instances of justifiable increase the necessary delay resulting from the probable volume of cases would work injustice to the carriers."

It may be pointed out that there is a distinction between the bill to which Chairman Knapp in this letter referred, providing for automatic postponement of every protested advance, and the present proposal to "authorize the commission to postpone" advances (that is, in its discretion). We are forced, nevertheless, to conclude that the commission, being unable to examine all protests, and thus obliged to postpone all, would be burdened with congestion causing delays even greater than those which would result from automatic postponement upon protest, since the discretionary power would involve preliminary as well as final hearings and constitute so much the greater embarrassment to the commission. From the vigorous opposition of the commission to any measure which would cause delays in the adjudication of protests, it seems fair to assume that that body will withhold its approval of any measure unless it contains effective provision for restricting protests to a number which could be passed upon promptly yet thoroughly.

How could the right of protest be restricted? To what class of shippers will the right be denied? If it were denied to any the law could not stand and in point of fact is it probable that a measure can be so drawn as to restrict the number without doing a wrong to those excluded?

It is our conviction that no such bill can be drawn. Certainly none of the bills now on the calendar and dealing with this subject attempt to restrict the number of protests to a working basis, nor do the published reports of the President's Des Moines address indicate that he had at that time under consideration such restrictions.

Assuming that the proposal is to allow unrestricted protests of all advances, and that under such a system all advances would be protested and all postponed, with a continually increasing accumulation of arrearages amounting in most cases to holding up of all advances indefinitely, we urge upon your consideration what seem to us convincing reasons for not giving this measure the prestige of support by the federal administration.

The proposal under discussion would impart to rates a general rigidity as a normal condition, which could only be changed item by item by special permission, obtained after legal process.

It has been the elasticity of the rate structure that has built up the farms, mines, mills, and trade of the country, developing new business while fostering old. In order to meet the requirements of industries and communities, the rate makers must keep in daily touch with conditions and conform rates to the needs of their constituents. The one thing indispensable to a railroad is that the industries whose product it carries shall be prosperous.

What gives the far-sighted shipper greatest solicitude is that he should at all times have good service. The fraction of a cent involved in an increased freight rate can perhaps be absorbed, while the selling price is maintained at a figure enabling him to hold his customers against competition in distant markets. Slow transit due to congestion or other inadequacies of freight service can not be "absorbed," and the customer may be lost altogether by failures in delivery. It is therefore quite possible that an increased freight rate, if it results in better facilities to the shipper, is not a burden upon him but his salvation.

These constant increases and decreases (and we believe in both in their proper places) must so balance that the railroad shall meet its cost of operation and have an adequate surplus for making or financing improvements. It is one of the extraordinary facts of our national history that the average freight rate should have declined, as the statistics of the Interstate Commerce Commission show, rather than increased, when the steadily rising cost of many items entering into the service is taken into consideration.

If there have been increases either direct or through changes of classification, have they been as great in proportion as the increase which the shipper has in the same period made in the price of his own goods? And in the meantime while the general tendency has been downward in rates, the railroads like all other business enterprises have had to pay more for labor and materials. To cite a single example, the wages, which are more than 40 per cent of the gross receipts of the railways of the United States, had so increased from 1897 to 1907, according to the reports of the Interstate Commerce Commission, that the number of days' labor which could be bought for a given number of dollars in 1907 was 16.27 per cent less than in 1897.

If rates can not be increased without legal process the railroads will make reductions only with the greatest caution. To hold up all proposed increases as suggested would, of course, automatically hold up all reductions. Shippers or boards of trade often ask railroads to make, temporarily, an especially low rate in order to give relief from dis-

stress caused by some emergency. As a temporary measure the railroad can and does afford this relief. As a permanent rate the reduction would usually be impossible to maintain. No railroad would voluntarily reduce a rate under such conditions if it knew that it might not be able, when the temporary exigency should have passed, to restore it without a long-drawn-out controversy.

Chairman Knapp, in the letter from which we have already quoted, said:

"If no rates could be increased without the approval of the commission after affirmative showing by the carrier, it might happen that many reductions now voluntarily accorded would not be made."

Thus we should have a situation in which the railroads could not change their rates because of the law, and the commission could not change rates because unable to clean up its docket. Practically, therefore, the proposal would mean only a petrification of rates.

What public dissatisfaction with the existing system has been shown to justify any such revolution as would be involved in such legislation as is suggested?

Do the 5,952 complaints already referred to as lodged with the commission, with the result that about 3 per cent were ultimately decided in favor of shippers, justify such action?

When the commission states that it would have to examine 150,000,000 rates to determine the increases made in the last two years, do not the 5,952 complaints made appear small and the cases finally decided in favor of the shipper become infinitesimal?

Do not these figures set up a strong presumption that rate making by the traffic officials of the carrying lines has on the whole been fair to the shipper? We have investigated and found that on most lines less than 10 per cent of all the rates filed since July 1, 1906, involved any change whatever, either up or down. Where there were changes a great many were reductions.

The argument has been advanced that "established industries" are now at the mercy of the carrier so long as it retains the power to increase rates. But is it not the fact that under the law as it stands such an industry has its complete remedy in restoration of the excess with interest when a rate is declared unreasonable, while under the law as proposed the carrier would be deprived of its rightful revenue without remedy if its rate as filed were sustained?

The Interstate Commerce Commission in its reports for 1907 and 1908 indicates certain types of enterprises which it regards as being in a position to be injured if the railroads continue to possess the power to advance their rates without hearings before the commission. An instance cited is that of the coal operator doing business under contracts with customers. The commission remarks: "The margin of profit is such that an advance in the transportation charge of no more than 5 or 10 cents per ton may convert a profitable contract into a losing one." The operator, however, can and if prudent always does establish complete protection for himself and his customers by inserting in the contract a clause providing that if the freight rate shall increase the price shall increase correspondingly and that if the freight rate shall be reduced the customer shall have the full benefit. The same expedient would, of course, be applicable to any commodity. Suppose, moreover, there were no such method of protecting contractors, and that the commission were to be authorized to postpone in its discretion for their benefit the going into effect of rate advances, how would the commission reconcile the conflicting demands of various dealers whose contracts were not made and could not be made for identical periods? It seems to us that the task would be one of hopeless confusion. We have been unable to imagine a legislative device by which shippers can be insured against changes in the price of transportation any more than they can be insured against changes in the price of labor, materials, or the sudden and unexpected imposition of new taxes.

We are unable to see upon what real grievance the request for this power is based or what benefit would result from conferring it. On the contrary such a departure would involve the serious dangers which are enumerated above, and we respectfully urge you that unless a way can be found to provide effectually against the evils which we have mentioned, you will not recommend that the President give this proposal the influence of his potent official sanction.

GEORGE A. POST.	W. G. PEARCE.
H. H. WESTINGHOUSE.	H. G. PROUT.
O. H. CUTLER.	J. S. COFFIN.
W. H. MARSHALL.	W. V. KELLEY.
E. S. S. KEITH.	E. L. ADREON.
A. H. MULLIKEN.	J. H. SCHWACKE.
O. P. LETCHWORTH.	A. M. KITTEDGE.
CHARLES A. MOORE.	JOHN F. DICKSON.
FRANK W. NOXON, <i>Secretary</i> .	

PASADENA, CAL., January 5, 1910.

HON. JAMES R. MANN,  
House of Representatives, Washington, D. C.

DEAR SIR: I noticed by the papers a day or two ago that you have introduced a bill in the House providing for an amendment of the interstate-commerce laws, which I think is a very wise move, as the present law is very defective, giving the railroads a chance to rob the people, using this as a shield.

I wish to call your attention to a case of my own. As you probably know, my health has not been very good for the last few years, and I have been spending my winters in Pasadena, having a house here, and living in Chicago in the summer.

I am in the habit of sending an automobile out each year; this year I shipped two. Before shipping I was very particular to have them billed properly to avoid an overcharge at this end. I got a rate from the contracting freight agent of the Santa Fe from the general freight agent of the Chicago, Burlington and Quincy, and from the local agent of the Chicago, Burlington and Quincy at Naperville, Ill., from which point they were shipped. These rates all harmonized. The cars were properly weighed. I received a bill of lading and prepaid the freight, which amounted to \$120 on each car.

On arriving here the agent of the Santa Fe advised me that there would be \$126 additional charges on the machines, that the agent at Naperville had made a mistake in billing the cars, and had not charged the proper rate. You can imagine how I felt after being as careful as I was to avoid trouble. The agent here informed me that under the provisions of the interstate-commerce law they were forced to adhere to uniform tariff rates, and while he realized the injustice of it I would have to take my medicine. Otherwise he could not turn the cars over to me.

I took the matter up with their general freight agent in Los Angeles and also the traffic manager of the Santa Fe Railroad, and they could give me no relief. In fact the Santa Fe people here and in Los Angeles informed me that they were having trouble of this kind every week and had some that were more aggravating than mine.

Now, you can appreciate the injustice of this sort of treatment, making the shipper responsible for the acts of their own agents. I shipped these cars in good faith and prepaid the freight, and they agreed to deliver them to me in Pasadena at that price. Of course the only thing I could do was to pay the overcharge or replevy the cars, and lose the use of them and incur a lot of expense. As I mentioned before, this thing is occurring every day with shippers and it is simply a confiscating of their property. There should be a penalty where railroads give one rate and collect another. They should be held responsible for the acts of their agents, and I hope in any amendments offered to the interstate commerce law you will incorporate this, as I can furnish plenty of people who have been treated just as I have. It looks to me, after reading the interstate commerce laws, that the attorneys for the railroads had much to do with drawing this bill.

Yours, truly,

T. P. PHILLIPS.

(CHICAGO, January 21, 1910.

HON. JAMES R. MANN,  
House of Representatives, Washington, D. C.

DEAR SIR: Kindly note attached copy of our market letter of January 20, in which we refer to the unsatisfactory transportation service throughout the country. A copy of this has also been sent to Representative J. G. Cannon, the Speaker of the House.

It is quite possible that you will find this a subject worthy of inquiry by the Government, with a view of bettering the service furnished the people. In it, it strikes us, you will find one of the chief reasons for existing high prices and dangerous inflation of values. Our company is in the business chiefly of buying and selling the actual cash grain and seeds, and, handling as we do approximately 5,000 cars per annum, we are in a position to know directly how severe are the hardships imposed on the grain trade of the country by the poor service on the part of the railroad companies. Grain is in transit from four to eight weeks, and in some cases even longer, that should run in to market in from three to ten days.

Every concern of any importance in the grain business in the centers has hundreds of thousands of dollars tied up, and the aggregate runs away into the millions. It is a well-understood fact that the credit of a large part at least of the grain trade is strained to the utmost. Banks are compelled, for self-protection, in many instances to refuse further advances, even against bills of lading, and the farmers and shippers of grain in the West, while willing and anxious to sell and to move their grain, are utterly unable to do it. Country elevators almost everywhere are full to overflowing and our shippers in the West, comprising between 500 and 1,000 of the smaller grain shippers throughout

the Mississippi Valley territory, complain bitterly of the lack of facilities, and of the possibility of loss in their business owing to the fact that they can not dispose of their holdings.

We realize fully the fact that severe weather, such as we have had this year, will necessarily hamper the transportation companies, but, with good management, it would hardly be possible to cripple them more than temporarily, and business would not be so materially delayed. If the management of the railroad companies made proper provisions for severe weather, such as can be expected every season—if their engines and rolling stock were put in good shape, sufficient snowplows, men, machinery, etc., provided to keep the tracks clear—there is little question that the actual delays would be much less, and perhaps not enough to seriously injure the business and trade of the country. As it is, the western roads between Chicago and points of shipment are in the worst possible shape, loaded cars are strung along all switch and side tracks throughout the country, and conditions seem to be getting worse rather than better.

It may be impossible to do much to help this state of affairs for this season's business, but immediate inquiry and pressure brought to bear would undoubtedly help some and might prevent a recurrence of this sort of thing for the future. Tight money and inflated values resulting from a tie up such as described above could easily result in semipanic conditions, especially if coupled with equal inflation in the stock markets of the East, and the usual disastrous consequences, as evidenced by the severe failures of the past few days. We would not like to see the panicky conditions of two years ago repeated, but we fear that unless relief in the shape of a release of the large amounts of money tied up comes soon there is great danger of a repetition of the bad state of affairs of that time.

In any event, governmental inquiry should be instituted, with a view of regulating the railroad service throughout the West. Our information goes to show that the eastern roads have not been so badly troubled from a tie up as the western. Whether this is owing to better management or to less severe weather, we do not know. We are inclined to think that more pains were taken by the trunk lines running from Chicago to the seaboard to keep their tracks clear than by those in the West. Their motive power and rolling stock is in much better shape and shippers from Chicago to the East are making fewer complaints.

We will be glad to furnish any further information along this line, such as is within our power, if required.

Yours truly,

SOMERS, JONES & Co.  
A. L. SOMERS, *President*.

CHICAGO, *January 20, 1910.*

DEAR SIRS: The markets are higher to-day. Shorts covered freely, and there appeared to be renewed investment buying. The supply of cash grain is light. The railroad companies are not bringing it in promptly. It is hard to understand the attitude of the railroads. It would seem from the manner of handling their business that they have had a stroke of paralysis, and that it should be made the subject of inquiry by the Government to effect a cure. On the face of it, it seems inconceivable that a railroad conducted for the real interests of its stockholders and the public should go all to pieces with a few weeks of zero weather. The old story of defective motive power and rolling stock, so evidently the result of false economy and bad management, is becoming tiresome, and it is high time that something was done by the Government to conserve the interests of the people and to give the country the transportation service to which it is entitled. Millions of dollars' worth of grain and other property is tied up, money is getting tight, interest charges are piling up, and the consumer pays.

We advise strongly to hedge holdings of cash grain of all kinds in futures in the pits here. This is especially true of the wheat, oats, and barley, competition for all of which from other exporting countries is extremely great. Barley prices will probably depend largely on oats values, and should also be hedged in the May oats. Wheat prices look high in view of the fact that other exporting countries are supplying European needs. This country is likely to have a large surplus left over unsold unless prices get down considerably lower before the opportunity to sell abroad is lost. Russia's enormous crop of wheat, 783,000,000, is its money crop and will, no doubt, be marketed freely during the winter. The possibilities for shipments from Russia are best shown by the following table of crops, as it is not generally known how large Russian crops are:

*Crops of Russia.*

	Rye.	Wheat.	Oats.	Barley.
	<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>
1909.....	896,835,000	783,000,000	1,145,373,000	473,617,000
1908.....	752,790,000	569,486,000	942,571,000	377,926,000
1907.....	808,126,000	510,692,000	907,261,000	353,447,000
1906.....	666,846,000	508,392,000	713,005,000	312,038,000

*Wheat.*—The May closes  $\frac{1}{2}$ , the July  $\frac{3}{4}$  higher, samples following. Durum is 95 to 1.02. All sample wheat without dockage for dirt.

*Corn.*—May and July close  $\frac{1}{2}$  higher, samples  $\frac{1}{2}$  to 1 cent higher. Sample grade, 58-60 $\frac{1}{2}$ ; 4 mixed, 63 $\frac{1}{2}$ -64; 4 Y, 64-64 $\frac{1}{2}$ ; 3 mixed, 65; 3 Y, 65-65 $\frac{1}{2}$ ; 3 white, 65 $\frac{1}{2}$ -66 $\frac{1}{2}$ ; 2 Y, 68 cents.

*Oats.*—May and July close  $\frac{1}{2}$  higher; samples  $\frac{1}{2}$  to 1 cent higher. 4 whites, 47 $\frac{1}{2}$ -48 $\frac{1}{2}$ , mainly 48; 3 whites, 48 $\frac{1}{2}$ -49 $\frac{1}{2}$ , mainly 48 $\frac{1}{2}$  to 49; standards, 48 $\frac{1}{2}$ -50 cents.

*Rye.*—Firm. No. 2, 80-81.

*Timothy.*—Strong. Spot seed quotably 3-3.80, mainly 3.25 to 3.50. Spring trade is setting in and, with probable delay in arrival, immediate shipments for best results are in order.

*Barley.*—Steady to 1 cent higher. Malting, 67-73, mainly 69-71; mixing, 63-65, and screenings, 50-65. Supply too light. Large quantities of barley in transit, but not available, and maltsters compelled to buy locally to replenish their stocks. High prices for cash grain of all kinds likely, as not much show to get the railroads cleaned up for another month.

Closing prices are:

	Wheat.	Corn.	Oats.
May.....	\$1.09 $\frac{1}{2}$ - $\frac{1}{2}$	\$0.68 $\frac{1}{2}$ A	\$0.47 $\frac{1}{2}$ A
July.....	1.00 $\frac{1}{2}$	.67 $\frac{1}{2}$ A	.44 $\frac{1}{2}$ A
September.....	.96 $\frac{1}{2}$	.67 $\frac{1}{2}$ B	.41 $\frac{1}{2}$

Yours, truly,

SOMERS, JONES & Co.

BUREAU OF RAILWAY NEWS AND STATISTICS,  
Chicago, January 28, 1910.

Hon. JAS. R. MANN,  
House of Representatives, Washington, D. C.

MY DEAR MR. MANN: I wish to thank you for your kindness in sending me your own bill and the Townsend bill containing the proposed amendment of the act to regulate commerce. While, as you are aware, I am one of the students of railway problems who does not believe that any crying necessity exists for further legislation on this subject, especially at the present time, and without giving the Hepburn Act time to prove its value or its weakness, I am inclined to think that your bill contains less objectionable matter than Mr. Townsend's, which is largely a formulation of the pleas of the Interstate Commerce Commission for more power, where they should ask for a limitation of their opportunities to cripple the railways,

It seems to me that Congress has missed absolutely the one feature of all attempts to regulate the railways where there is need of a change, and this is in the selection of the body intrusted with the power to regulate. There should be a brief act declaring that the commission should be composed of three lawyers chosen from the circuit bench, and four men of practical experience connected with railways—one from the traffic department, one from the financial department, one from the operating department, and one, like Mr. Clark, to represent the railway employees' view of the situation. Then we should have a commission fairly well balanced and equipped to sit in judgment over the problems submitted to it. The control of railway statistics should be taken absolutely out of the hands of the commission and placed under the control of the Department of Commerce and Labor. For over twenty years these statistics have been the shuttlecock of an educational theorist who could no more manage 10 miles of railway than I could.

The commission and its secretary should be absolutely prohibited from agitating for or against legislation relating to its duties. It is nothing short of a scandal—the use made by the commission of its position to antagonize the great industry which it is appointed to protect as well as to regulate.

The trouble with the whole situation is that the railroads are afraid to say their souls are their own.

As to your bill, it seems to me that you do not define sufficiently the class of men from whom your commissioner of transportation should be chosen; and in these days of high cost of living I do not believe you can get a man fitted for the position for \$6,000 per annum, nor a man fitted to be his deputy for \$4,500. I was interested to see that you have made provision for the issue of tickets or passes for transportation in payment for publication in newspapers of brief time-tables, showing the arrival and departure of passenger trains at the place where such newspaper is published. I think that this provision is all right, but it should be made clear that this exchange of transportation for advertising should be confined to time-tables and not permitted to run for general advertising. Both as an ex-newspaper editor and as a railway statistician it seems to me that the time-tables of railways should be published for the convenience of the public, taking the place of its being posted at railway stations or in railway offices.

Asking your pardon for imposing these rambling thoughts upon you, I am, with personal regards,

Yours, very truly,

SLASON THOMPSON.

COPY OF LETTER AND PETITION OF GRIFFIN WHEEL COMPANY.

CHICAGO, ILL., January 29, 1910.

DEAR SIR: We, the undersigned, a self-appointed committee of Chicago business men, appeal to you, as one of Mr. Mann's business constituents, to sign the inclosed. As Mr. Mann is quite prominent in railroad legislation, the fact of a large number of business firms who furnish employment to a great number of his constituents appealing to him individually (as this is intended) will undoubtedly have great weight with him, and quite possibly with other Congressmen who will become aware of it.

The appeal represents nothing but your individual interests. A prompt return with your signature will greatly oblige the committee.

Yours, truly,

AMERICAN STEEL FOUNDRIES,  
By WM. V. KELLEY, *President*.  
AMERICAN BRAKE SHOE AND FOUNDRY COMPANY,  
By J. B. TERBELL, *Vice-President*.  
BLUE ISLAND ROLLING MILL AND CAR COMPANY,  
By F. H. NILES, *President and General Manager*.  
GEO. CARR, *Vice-President*.  
BY-PRODUCTS COKE CORPORATION,  
By MASON H. SHERMAN, *General Manager*.  
DEARBORN DRUG AND CHEMICAL WORKS,  
By ROBT. F. CARR, *President*.  
FEDERAL FURNACE COMPANY,  
By W. L. BROWN, *President*.  
FEATHERSTONE FOUNDRY AND MACHINE COMPANY,  
By C. D. PETTIS, *Vice-President*.  
GRIFFIN WHEEL COMPANY,  
By T. A. GRIFFIN, *President*.  
IROQUOIS IRON COMPANY,  
M. COCHRANE ARMOUR, *President*.  
PICKARDS BROWN & Co.,  
By C. N. BOYNTON, *Vice-President*.  
ROGERS, BROWN & Co.  
RAILWAY STEEL SPRING COMPANY,  
By W. H. SILVERTHORN, *President*.  
SHERWIN WILLIAMS & Co.,  
By R. W. SAMPLE, *District Manager*.  
WILLARD SONS & BELL COMPANY,  
By L. C. WILLARD, *Secretary*.



CHICAGO, January 29, 1910.

HON. JAMES R. MANN, *Washington, D. C.*

DEAR SIR: The undersigned, doing business in your district, believing that you desire to protect and advance the interests of your constituents in every proper way, submit the following request:

We would have you do all that you can to call a halt on all radical railroad regulation in this Congress.

Without questioning the merits or demerits of the railroad legislation proposed by you, or others, we believe that no harm can be done by limiting much of the proposed railroad legislation, and giving railroads opportunity to work out or demonstrate their intention of carrying out railroad legislation already in effect.

We know that we have suffered greatly in our business during the past two years, largely on account of the poor financial condition of railroads. Six months ago that condition improved; we all have noted how promptly business picked up. During the past three months it has gradually dropped off, with relatively decreasing new business in sight, and again some of us are laying off our men, and some of us have stopped putting our idle plants in order for resumption, and all because of the volume of threatened disturbing congressional legislation. Do not think that we are doing this for the sake of the railroads, or that they are urging our actions. We need no spur to wake us up to our condition. We want our Congressmen to help us, and under the circumstances think it is their duty to do it.

We know railroad legislation has been necessary, but it has reached a point where it is excessive and is crippling us and the whole business community.

Yours, truly,

FORT WAYNE, IND., January 10, 1910.

JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: We note with much interest that you have introduced a railroad-rate bill in which we are very much interested. We do not note that you have gone into it as far as our President has in the way of recommending a commission facilitating the handling of matters of this kind or whether you have inserted in your bill a clause compelling railroads to transport commodities according to the rates named in the bills of lading issued against such shipments. We have recently been obliged to present bills for overcharges resulting from overcharge on shipments of May, 1909, and under the rules of the Interstate Commerce Commission and of the railroad companies covering refunds we have been compelled to secure the original bills of lading. By all the modern means of evasion and inattention the railroad companies have succeeded in keeping us out of the possession of these bills of lading, which were in their files and where their agent in New Orleans could have put his finger on them without five minutes' notice. In this way we have been unable to get all these bills of lading returned until a few days ago or at the close of the year 1909. We have now started the claim on its way to get the proper signatures for refund, and this will also require quite a number of days or weeks to secure the same. It would seem therefore that in all probability it will require one year's time or more to secure a refund of about \$200 on 9 cars of hay, which were overcharged. We are citing this instance particularly for your attention in order to give you somewhat of an idea of the feeling in the country among shippers generally in regard to this matter and in order that you may be thoroughly awake to the importance of having some proviso in your bill which will absolutely compel the railroad companies to collect and demand only the amount of freight as stipulated in the bill of lading, which constitutes and is the contract between the shipper and the transportation company. We shall be glad to have a full copy of your bill as soon as the same is printed and ready for distribution, and wish to thank you in advance for any courtesies you may show us in this direction.

Very respectfully,

S. BASH &amp; Co.

P. S.—You possibly are aware of the fact that the railroad companies have done everything they could through their agents and general managers to make the present interstate commission law and the rulings in reference to refunds on overcharges just as odious to the shipper as they could make it. They have done this for the purpose of trying to secure public sympathy and sentiment against the present Interstate Commerce Commission. It is needless to say they have only aggravated matters and made the feelings on the part of the public more intense than it ever was before.

NEW YORK CITY, February 9, 1910.

*To the Committee on Interstate Commerce, Washington, D. C.*

GENTLEMEN: I am a stockholder in a number of railways and wish to lay before you in my humble capacity as a citizen of the United States a few suggestions bearing on the issues mentioned in proposed railway legislation now before your committee as I understand it. I spent some fifteen years in the railway and steamship work and got some bitter experience therein. I believe in government regulation along workable lines, but so much legislation is being proposed which substitutes the officials of the Government for the officers and directors of the companies, and in some cases the stockholders even, without due process of law or the Government acquiring any legal rights of ownership, as provided in the Constitution, whereby the Government must pay for property in advance before it attempts to run it, so to speak.

I wish to suggest a number of recent court decisions in the last year or two which very clearly outline the fact that some laws now being cited and proposed are hardly constitutional.

First, most railway bills exist by charters, which were legally granted by States. They mentioned certain rights all around, and in most cases limit the charges to the public. The Supreme Court in the recent case of the Twin City Railways, very clearly stated that a charter is a binding contract all around, and that the city councils could not pass laws compelling changes in fares, issuance of transfers, etc., without the agreement of the company, where the charter stated the limits, etc. Some day some stockholder, tired of holding stock for long years without dividends, will get up a case along these lines on some steam railway.

Some of the state railway commissions are authorized to pass on issues of stock, etc., as proposed in the national bill. If you will look at the decision of the New York court of appeals in the Delaware and Hudson bond-issue case, the court very clearly said that if the issues were within the charters, etc., the commission could not prevent, and above all could not assume the rights of the boards of directors of the companies, etc. A similar case applying in the national courts might meet with similar decision, if the Interstate Commerce Commission were empowered to try it on. There could be no objection to a law that gave the commission the right to see that the railways do spend the money for the things their reports say they intend to use it for, etc.

Since the Sherman antitrust law was passed your Congress has passed the Hepburn bill, etc. In Arkansas recently they put in a railway commission which passed on certain things, and then some one undertook to punish the railways under the antitrust bill in that State. The state supreme court decided that when the railway commission was put into existence the terms of the antitrust bill were canceled so far as it relates to railways. Possibly the same thing could be said now if ever some stockholder brings that point to the United States Supreme Court, claiming that the latest railway bills supersede the antitrust laws as relating to railways.

The city of New York is building some subways here. The city undertook to utilize and damage certain property without the usual due process of law, etc., compensation in advance, on the grounds that it owned the streets, etc. But the court of appeals decided that building a railway, etc., underground was not using the streets for the purposes they were originally dedicated to, and further that the city had only the rights of a railway corporation when it went into that business. Possibly the Government of the United States is in the same position when it undertakes to confiscate the rights of stockholders, etc., either by control without purchase or operation after purchase, if any stockholder ever gets his hearing in the United States courts on this point.

The Kentucky railway commission undertook to reduce all rates in Kentucky on a percentage basis some time ago, but the Supreme Court of the United States decided it could not arbitrarily do that sort of business even on purely intrastate rates.

The whole trouble has been, in my opinion, that Congress has undertaken to cure all the railway evils in one big bite out of the evolution of the past; has tried to have a handful of men be judge, jury, and prosecutor on all railway questions for a territory comprising some forty-six nations, more active than the whole of Europe in many ways. I can imagine the troubles of an interstate commerce commission appointed to regulate all of the railways of Europe, as we are trying to do in this country.

The Government should try to make railways live up to published tariffs, where complaints come to them; see that the railways keep honest records, and spend money exactly as their published reports say they do; try to settle the disputes between rival roads, sets of shippers, markets, and sections of the country, according to the conditions presented in each case, since no two are alike, through a commission, the same as the Government keeps supervision over other industries. Where anyone refuses, prosecute men in the courts in the good old way our fathers provided, instead of com-

panies, thereby punishing the guilty men and not the innocent and helpless stockholder. Think of how funny it would sound if the Government undertook to fine a bank out of its capital and surplus every time a dishonest cashier or other officer does something contrary to the law or good morals in business, and let the guilty cashier get away with his ill-gotten gains.

It takes time to build a road, to develop its territory, to induce settlers and industries to move in, etc., and I fail to see how you can cure all the ills incident thereto in a year or two, as seems to be the effort of Congress with frequent changes of laws touching fundamental things, instead of simply amending existing laws, as practice shows desirable, or as the courts outline.

The whole scheme of the new laws appear to me to be playing into the hands of strong companies and weakening the weaker ones, preventing competition by the building of new lines, etc., where existing lines hold rates too high after the territory builds up.

I have a fear that the drastic schemes proposed lately are so far toward the Government overreaching its powers, under our Constitution, that some day we will get a court decision knocking out the whole railway regulations as they now exist, since most of them are contrary to many decisions now given, as you will see by reading some of the decisions I have mentioned. I would rather see the regulation strengthened along sane and workable lines. When I come back from Europe I always wonder why we pound our railways, when one considers the rates, service, intense rivalry between States, markets, etc., when the railways pay in taxes an amount equivalent to about 3 per cent on their gross outstanding capital, some 6 per cent of their gross earnings, pay the highest wages, have the lowest rates by any methods you can figure, harassed by employees, shippers, States, and nation, and yet go on year by year increasing plants, etc. There are many dishonest and scheming men in the railway business, but possibly no more on a percentage basis than in other lines, and taking it all in all, I suppose the only way the poor share owners will ever get a fair show in this country is to form a union and do what all the other unions do—fight for their rights guaranteed to all by the Constitution. I fail to see why a millionaire railway stockholder who bought stocks dirt cheap, or his ancestors did, which enhanced in value with the growth of the country, is a criminal and constantly punished by fines, etc. Only about 5 per cent of our national wealth is in railway securities, and while the railway stockholders are getting rich on their 5 per cent of the total wealth, by growth of country and business, certainly the other 95 per cent of the total wealth is increasing just as fast or even faster, because no one tries to take 6 per cent per annum of the gross earnings of that 95 per cent from it each year in taxes, or allows nine men to say how fast it shall grow, or what it is worth, what it shall spend for improvements, etc.

I wish that some far-seeing Congressmen would have the stamina to come out just once and say that they would like to see things let alone for a year or two, until after some of the unsettled cases now in the United States courts are decided by the Supreme Court, so intelligent action can be taken thereafter, instead of ill-considered, unintelligent laws placed on the books in the meantime.

Yours, very humbly,

H. P. DIPPE.

CHICAGO, February 12, 1910.

HON. JAMES R. MANN,  
Washington, D. C.

DEAR SIR: I have no especial grievance against your bill, the President's bill, or any railroad bill now before Congress, but I deprecate them all. I will illustrate my reasons for this by the past condition of that part of my business (representing an investment of over \$2,000,000) which is confined to the congressional district represented by you, each plant having been operated at its full capacity during 1907, and the cost (based on the then cost) of wages approximated \$3.25 per ton, or \$1 per wheel, and wages have never been lower since. The actual output which we had in the East Kensington plant was 450 wheels per day and in the West Kensington 1,050 wheels, making a total output of 1,500 wheels per day, representing a pay roll of \$1,500 per day. We closed the works November 1, 1907, and from that date to the 1st of February, this year, were six hundred and seventy-two working days at the rate of 24 per month, and the output of 450 wheels in one plant and 1,050 in the other, used for these figures, was based on an actual output and not an actual capacity, which could easily be increased 10 per cent. Therefore, for the purpose of comparison, we had six hundred and seventy-two days in the twenty-eight months at an output of 1,500 wheels per day, which would have been done if conditions remained as they were, thereby representing a fair output of 1,008,000 wheels. As a matter of fact we manufactured in your district 27,000 wheels in all that time, and these 27,000 wheels were made at Kensington by taking them from our West Chicago shops in October, 1909,

leaving a corresponding space idle there; the reason being that we confidently hoped at that time that there would be a revival of business, and we wished to prepare a unit of an organization that had been scattered for more than two years, so that when the business came, as we fully expected, we could increase our organization much more rapidly and efficiently from a 20 per cent operating force than we could from a totally idle plant and no labor organization. But leaving that out of the question and deducting the 27,000 wheels we did make from the 1,008,000 we should have made leaves a total of 981,000 wheels which are forever lost to us and \$981,000 in pay which is forever lost to our workmen in your congressional district. And as the car wheels constitute but 10 per cent of the car, and all these cars are built in your district, it is not unreasonable to suppose that there was nine times as much labor lost from the other parts of the car, making in all a total of between \$7,000,000 and \$8,000,000, and which would have been largely distributed amongst the merchants and other small business men in the same district; and this is making no mention of the large amount of labor that is employed in other parts of the State and your district producing our raw material (notably the Iroquois Furnace Company, which supplied us with iron), and this constitutes the sole reason for our taking the active part that we have in trying to better ourselves.

"We venerate the pledges of the President and the Republican party, but for ourselves and workmen dare to plead." (With apologies to Logan.)

Very sincerely, yours,

T. A. GRIFFIN.

THE LAKE SHORE ELECTRIC RAILWAY COMPANY,  
*Sandusky, Ohio, February 16, 1910.*

HON. PAUL HOWLAND,

*Member House of Representatives, Washington, D. C.*

DEAR SIR: I wish to call your special attention to H. R. 17536, introduced in the House of Representatives by Mr. Townsend, January 10, 1910, concerning the creation of an interstate commerce court and the amendment of the act entitled "An act to regulate commerce."

On page 18, lines 20 to 23, inclusive, prohibit the Interstate Commerce Commission from establishing through rates between interurban and steam roads. We feel that that part of the bill prohibiting the Interstate Commerce Commission from establishing joints rates between steam and electric railroads is against the interest of the traveling public, the patrons of the interurban railroads, and the prosperity and development of such interurban roads.

The Lake Shore Electric Railway Company has many points along its railroad where passengers do not take its cars to go to a near-by town or junction with a steam railroad to make their journey, for the reason that they can not buy a through ticket to their destination nor can they get their baggage checked to their destination, but, on the other hand, are required to travel upon the trains of our steam road competitors, who operate not more than two or three trains a day, affording very little train service as compared with the Lake Shore Electric Railway. The steam railroads working together and against the electric railroads in a case of this kind not only injure the electric railroads but inconvenience the traveling public. The traveling public under such circumstances do not get all the available benefits that are in store for them.

There are also a number of points on this property where we have a large exchange of passenger traffic between this company and steam roads. In these instances it is now necessary for the travelers to purchase two tickets and have their baggage checked twice to reach their point of destination, and oftentimes are compelled to have their baggage transferred. These travelers are therefore receiving only a part of the advantages to which they are entitled when, on account of the convenience to them, they use an interurban and a steam road, while the steam roads between themselves extend these advantages to the traveling public.

I wish to say, however, that we have traffic arrangements with three different steam roads whereby through tickets are sold and baggage checked in exactly the same manner as the steam roads do among themselves and in these cases the public are receiving all the benefits.

Looking at this matter broadly, it would seem to us that the portion of section 9, above referred to, should be amended so as to give the Interstate Commerce Commission authority to order through rates and through tickets as between interurban and steam roads, if in their judgment it was proper and advantageous to the public.

If I have not made myself clear on the matter, I should be glad if you will advise me and I will endeavor to explain more in detail.

I trust you will interest yourself in this matter, because I feel certain that if you do so you can see the justice of this request.

Yours, truly,

F. W. COEN.  
*Vice-President and General Manager.*

FEBRUARY 22, 1910.

HON. ANDREW J. PETERS,

*House of Representatives, Washington, D. C.*

DEAR MR. PETERS: I have already sent you certain official figures from the railroad commissioners' report of Massachusetts relative to the small amount of freight or express business done by the Massachusetts street railway companies. Those figures, you may remember, showed that the receipts of the companies in Massachusetts from the sources indicated were less than 1 per cent of their gross receipts.

I have now obtained similar figures, based on the proposed census report relative to street railways. These figures are not authoritative Census Department figures, nor is that department responsible for them. I nevertheless believe that they are approximately accurate and will be substantially confirmed by the census report on street railways when issued. These figures relate to 939 companies, and include not only street railways, but interurban roads. The sources of their total operating earnings, which amount to \$418,187,858, are classified as follows:

Passengers.....	382, 132, 494
Chartered cars.....	705, 261
Freight.....	5, 231, 215
Mail.....	646, 575
Express.....	1, 560, 802
Sale of electric current.....	20, 093, 302
Miscellaneous sources.....	7, 818, 209

You will notice that the receipts from freight, as distinguished from mail and express, are but a small fraction over 1 per cent of the gross receipts. Including mail and express with freight, the receipts from all three sources are less than 2 per cent of the gross receipts.

The sale of electric current is an item of some significance which may interest you. Many of the companies furnishing street railway transportation are equally electric light and power companies, manufacturing and selling electric current for use in the different cities and towns in which they also operate street railways. This would seem an additional reason for excluding street railways from the proposed legislation, if the avoidance of further complications between federal and state jurisdiction and control is desired.

Sincerely, yours,

BUCKLEY W. WARREN.

SHORT POINTS RELATING TO LEGISLATION AFFECTING WATER ROUTES AND ILLUSTRATING THE INTERDEPENDENT RELATIONS BETWEEN FREE WATERWAYS AND FREE WATER ROUTES.

[Supplement to brief prepared by Daniel H. Hayne.]

1. That the tendency toward interfering with natural, competitive, and economic laws, where there are no abuses to correct, is destructive.
2. That natural and open highways should be as free to the people as the air they breathe.
3. That bound to this principle are the vehicles of transportation using such free and open highways. It is the God-given union of the ship and her husband, one and inseparable, the one dependent on the other in giving their benefits to the people. If left untrammelled by inelastic, artificial, narrow laws, they are the natural regulators of rates.
4. That such water interests operate under fundamental natural laws without unfair disadvantage or friction and with their evolutions toward higher and better standards.
5. It is not cheap transportation, but prompt, efficient, and, above all, safe transportation which the people demand.
6. Opening the doors to the possibility of unreasonably cheap service presents the same condition which threw so many rail lines into receivers' hands ten years ago. A community unable to support many competing parallel lines suffers in the end by the struggle of weaker lines for existence.
7. It is impossible and beyond human power to improve on nature's own way by inelastic and often unwise laws, seeking by artificial, drastic, and experimental legislation to deal with varying complicated future economic situations which may arise.
8. This is in effect saying that water transportation (being free of abuses and working along natural lines without artificial obstruction) is surrounded by checks and balances containing their own inherent corrective rules.
9. The issue is between evolution through nature's own laws as against revolution through human interventions often established in the laws in great haste without full

consideration as to where they will lead, and, conflicting as they may be, by patches here and there through demands of special influence.

10. The commerce laws were established by the people for their protection and to correct the then existing abuses.

11. They were not intended to establish privileges through governmental intervention at the instance of any transportation or special interest.

12. They are the laws of the people and are not designed to settle differences between the carriers themselves which arise through inefficient management or through any other design.

13. There is no public demand to hamper and blight the water routes—per contra the definitely expressed policy is otherwise.

14. It seems inconceivable that there could be any such public demand without public manifestation; we must then look deeper for the cause of this harmful agitation.

15. Where no abuses exist there can be no reason for regulating laws, except those developed by natural, healthy, and free competition, nor until the public demand is unmistakable.

16. The effort is constantly being made to encourage and upbuild the merchant marine, as instance the enormous expenditure for improving channels, which will reach probably \$45,000,000 and over per annum.

17. The work of prior Congresses sought means to foster and upbuild waterways and water routes, and this vast expenditure is being made with that end solely in view.

18. Along other lines toward the same ends witness:

(A) The great effort expended through the bureaus of navigation.

(B) The conference of governors at the instance of the President of the United States.

(C) The work of the Waterways Commission.

(D) The work of the commission seeking the conservation of national resources.

(E) The effort, indorsed by the present administration, to pay for the continuance and uplifting of the merchant marine through the means of subsidy.

All of which tends to illustrate the intensive effort to remove restrictions, rather than to add them, to the great marine interest of this country, which has constantly declined through interfering laws and mistaken policies of the Government.

19. The present tendency in the proposed amendment is pregnant with peril and tends to the imminent danger of complete effacement of the independent water routes.

20. The time-honored policies of this Government are, through inadvertence, in danger of a revolutionary reversal, ostensibly in the interests of the people, but which may be traced to other activities.

21. Water routes have been sufficiently harassed by attempting to include them in legislation intending to correct abuses of one class of transportation without taking into consideration the vast difference between the two classes of transportation, (a) one being based on artificial, monopolized, and closed rights of way, (b) the other on natural, free, and open highways, which does not lead to the abuse at which the commerce acts are aimed, but rather toward correcting them.

22. The policy of the people is to keep the vessel safe, but to facilitate her employment.

23. To limit the free field of operation is such a blow at the ancient and present policy of the people that legislation to that end would excite public amazement.

24. It seems to be the popular view that any act or amendments of the commerce acts seeking to regulate the abuses of one branch of the service (the land carriers) should be kept free from hurtful embarrassment of the other class of service (the water carrier), a service vastly more complicated than that by land.

25. Whatever may be the wisdom in the further regulation sought against the land carriers, it is our sense that the water carriers should be left untrammelled by artificial laws until the methods applied against the land carriers pass beyond the experimental stage and that any laws touching water carriers should be considered separately and when all of the intricate problems surrounding the merchant marine may be fully, leisurely, and carefully investigated.

#### SOME OF THE PRINCIPAL DIFFERENCES BETWEEN A COMMON CARRIER AND A PRIVATE CARRIER BY WATER.

*Common carrier by water.*—A line or vessel operating between fixed termini, holding out to take freight as offered. This includes mainly regular lines with high standards and a few sailing vessels, so situated as to be possible to be reached by legislation.

*Private carrier by water.*—A line or vessel not having fixed termini and not offering or required to accept freight unless willing to do so. This includes the wild carrier, the tramp carrier, the charterer of hull and a mass of sailing vessels and small boats.

The independent regular water line is one offering high-class service on schedule with latest safety appliances, working under a differential lower than the rails.

Private water carrier may have good or bad standards, may be in business for a day or more, elusive and intangible, so far as the application of the law, and is not covered by the commerce act. This class includes the wild carrier, sometimes designated a "free lance;" the tramp vessel, sometimes designated "pirate;" the charterer of a vessel, usually a common carrier, sometimes with its own motive power, at other times a barge or vehicle in tow, the barge being usually a private carrier, and the towboat usually but not always a common carrier, but bound only to the charterer and not to the cargo or freight contracts.

The regular water line with the high-class service the public demands having on the one side intensive rail competition, both on through and on local traffic, with the ability of the rails to offer unreasonably cheap rates at the cost of rail interior business.

On the other hand, regular lines subjected to even more serious competition, through the private carriers named (not covered by the act), and irresponsible, weak, regular water lines pursuing policy of letting vessels run down with effect to lower standards of service. The rails have their local territory from which they can demand sufficient to make up for port losses. The regular water line has no strictly local business. It is all intensively competitive with all rail and also water.

Regular lines with standard high-class service must either voluntarily relinquish their position or reduce their standard under an unequal struggle for existence, unless natural economic laws are permitted to have their full and uninterrupted course.

HOUSE OF REPRESENTATIVES,  
Washington, February 22, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce.*

SIR: Referring to H. R. 3046, now before your committee, "requiring railroads and other common carriers engaged in interstate commerce to make prompt acknowledgment and adjustment of claims for overcharges on freight and for loss and injury to same," I respectfully suggest that an amendment to section 3 of the bill after the last word ("brought") in said section, as follows, would provide for the jurisdiction of cases arising under the act, to wit:

"This act shall not be construed as excluding the exercise of a concurrent jurisdiction of cases arising under the act by the courts of the several States."

I respectfully submit that if your committee has a conviction that the bill as thus amended would be unconstitutional, of course I can not insist on a favorable report thereon. But if the committee should merely entertain a doubt of the constitutionality, I ask that the bill be favorably reported, and if the common carriers to be affected by its operation doubt its constitutionality they can have that question decided by the courts of the country, as many other similar questions are.

If the state court does not have jurisdiction of cases that may arise under the act then but few, if any, shippers could legally establish their claims, as the district federal court has no jurisdiction of claims less than \$2,000.

As to the necessity of Congress passing this bill or a similar one, I respectfully call the attention of the committee to the frequent and common complaints of shippers of the delay of common carriers, and more particularly of railroads, in settling claims against them for overcharges and for loss or injury to property while in their charge. And especially do I invite the attention of your committee to opinion No. 1088 of the Interstate Commerce Commission in the case of Tyson & Jones Buggy Company against the Aberdeen and Ashboro Railway Company et al., and in which Mr. Harlan rendered the opinion, herewith forwarded for the information of the committee and marked "Exhibit A." As will be seen, Mr. Harlan intimates that unless carriers will do what is fair and just to the shippers Congress may be called on to compel them to do so.

Very respectfully,

GEO. W. GORDON.

#### EXHIBIT A.

[No. 2785. Tyson & Jones Buggy Company v. Aberdeen and Ashboro Railway Company et al. Submitted September 16, 1909. Decided December 7, 1909.]

1. Complaint of an overcharge dismissed, the defendants having refunded the amount, but only after formal complaint had been made and copies served upon them.
2. Carriers criticised for their lack of prompt attention to plain overcharge claims and for their delay in adjusting them.

G. M. Stephen for complainant.

Henry A. Page for Aberdeen and Asheboro Railway Company.

J. L. Eysmans for Cumberland Valley Railroad Company.

Charles Heebner for Philadelphia and Reading Railway Company.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

#### REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Without entering into the details of this complaint it will suffice to say that, as presented on the pleadings, it involves a small overcharge upon a shipment of iron wagon axles made by the complainant in November, 1907, from Wilkes-Barre, in the State of Pennsylvania, to Carthage, in the State of North Carolina. The overcharge resulted from the inadvertent collection at destination of the fourth-class instead of the fifth-class rate, as required under the published tariffs of the defendants for a portion of the haul. The complainant, being advised of the fact that the fifth-class rate was the legal rate, made demand upon the Aberdeen and Asheboro Railway Company, the delivering carrier and principal defendant, for a refund of the overcharge. That company, although it had collected the charges on the shipment, apparently declined to investigate the matter at all, and contented itself with referring the complainant to the several carriers back along the route of the movement to the point of origin. After a rather extensive but fruitless correspondence in relation to the matter the complainant called it informally to the attention of the commission. No result followed from our efforts to get the serious attention of the principal defendant to the complainant's claim. Finally this formal complaint was filed. Promptly after copies of the complaint had been served upon the defendants and they had thus been put in a position where they were compelled to look into the matter it was ascertained that the complainant's contention was well founded and the amount of the overcharge was at once refunded.

In moving the dismissal of its petition the complainant advises us that it has a number of such claims still pending with various carriers, the settlement of which it has been unable to secure notwithstanding its earnest efforts in that behalf, and it asks that some action be taken by the commission in order that shippers may secure more prompt adjustment by carriers of overcharge claims. An order will be entered dismissing the complaint upon motion of the complainant; but we think the time has come for some comments by the commission in relation to the practice of carriers in such matters.

From shippers in all parts of the country, and from local traffic associations which are making earnest efforts on fair and reasonable lines to secure a reform in the practices of carriers in this regard, many complaints have been received during the past year of the inattention of carriers to plain overcharge claims and of their delay in adjusting them. And a survey of these complaints has led us to the conclusion that this practice, or rather lack of practice, among carriers is open to severe criticism.

A substantial portion of the time and labor of this commission is given to the effort to secure, through informal correspondence, the settlement of claims of this character, and it is a burden from which we ought to be relieved by carriers. On the other hand, from the shippers' point of view, nothing in connection with transportation is more vexing and irritating than the labor and delay incident to the following up of an overcharge claim and securing its repayment. When an undercharge occurs it is promptly discovered by the accounting departments of carriers when revising the billing, and demand is at once made on the shipper for payment. With equal facility overcharges are also detected by accounting officers. But from the complaints that reach us it seems to be the duty of no one in the interior organization of many carriers to see that the amount is refunded to the shipper. And when an overcharge is detected by a shipper himself, he is able in the great majority of cases, if we may form conclusions from the numerous complaints now before us, to secure its repayment only after his patience has been sorely tried by the effort and delay required in order to secure serious attention to his demand.

Without wishing to be understood as expressing the view that this loose practice with respect to overcharge claims is characteristic of all interstate carriers, it is nevertheless so common as to justify some attention by the commission. Apparently it is not understood as fully as it should be, by railroad officials charged with the adjustment of such matters, that the retention by a carrier of an overcharge not only has all the effects of an unjust discrimination against the shipper from whom the excess has been demanded, but leaves the transportation transaction in an unlawful condition, both under the act to regulate commerce and under the Elkins Act, until the overcharge has been adjusted. We are advised that the delay in making repayment is frequently due, not to the failure to discover the overcharge, but to the efforts of the



delivering carrier to ascertain before making the refund to the shipper which carrier participating in the movement is responsible. This is not a proper practice. The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears that an overcharge has in fact been made. When the refund has been made it is then that carrier's duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge has been discovered it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not.

We well understand that the adjustment of claims is a matter that requires time and that they can not safely be paid until after the facts have been fully investigated. But in our judgment the claims offices of carriers should be so organized as to enable them to dispose of all overcharge claims within thirty days, except those of unusual or special character, and such claims ought to be disposed of within sixty days at the utmost. We refer now to plain overcharge cases. The phrase "overcharge" as used by the commission embraces only cases where carriers have demanded and received a rate in excess of the published rate. We do not use that phrase in referring to cases where the published rate has been collected but is alleged on one ground or another to be an excessive rate. As to the latter class of claims, many of which are adjusted informally by the commission, it seems to us that the complaints of shippers ought to be investigated and put before us for disposition within ninety days in the great majority of cases.

The amended act to regulate commerce gives the commission no authority to establish any limit of time for the adjustment of claims or any authority to discipline carriers that are not attentive to their plain duty in such matters. The adjustment of claims, however, is a matter which the carriers themselves, in good faith to the shipping public, ought to take hold of so as to reach results within a reasonable time; and we shall expect the cordial cooperation of all carriers in our request that their claims departments be so organized as to give more prompt results, to the end that all occasion for the well-founded complaints that shippers now make may be removed. Carriers owe it to themselves not to put the commission under the necessity of calling this matter to the attention of the Congress and asking for power to compel them to do what, in their own interest and in fairness to shippers, should be done on their own initiative.

[Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of December, A. D. 1909. Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners. No. 2785. *Tyson & Jones Buggy Company v. Aberdeen and Asheboro Railway Company et al.*]

Upon consideration of the record in the above-entitled case and complainant's application to dismiss, from which it appears that the claim involved in the complaint was for reparation in the sum of 20 cents, resulting from the collection of the fourth-class rate on the shipment covered by the complaint, when in fact a fifth-class rate was applicable thereto; that upon the filing of the complaint and service of the answer, the Southern Railway Company, one of the intermediate carriers participating in the traffic in question, paid to complainant the amount of said overcharge in satisfaction of said complaint; therefore

*It is ordered,* That the complaint in the above-entitled case be, and it is hereby, dismissed.

WASHINGTON, D. C., *February 23, 1910.*

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: In response to your oral suggestion of yesterday I beg leave to make the following recommendations, addressing myself to committee print H. R. 17536:

Section 8. In my opinion, unless provision is made for reparation to shippers of the losses incurred by reason of misstatements of rates, shippers will not furnish information against railroad officials or employees. To give this section practical effect, in my opinion it is necessary that provision be made that shippers may be reimbursed by order of the commission.

Section 9. I would respectfully call your attention to the fact that no penalty is provided in case of failure of the railways to route as per shipper's instructions. It seems to be necessary, in order to make this section effective, that a fine should be imposed upon the carrier failing to follow shipper's instructions.

Section 12. In my opinion it is of vital importance that the provisions of this section should be made to apply to competing water carriers as well as to competing railroads. It is, if possible, even more important that railroads be prevented from controlling their competitors on the water than those on the land, and the growing tendency of railroads, through the ownership or control of their water competitors, to raise the rates of the latter up to the level of the rail rates is destructive of the advantages otherwise inherent to cities located on navigable waters. A striking example of this tendency is found in the situation to-day existing as regards the transportation of package freight between Chicago and Buffalo. (See report of the Chicago Harbor Commission, March, 1909.)

Referring to section 4 of the act to regulate commerce as at present in force, in my opinion the words "under substantially similar circumstances and conditions" should be eliminated, inasmuch as the proviso in this section very properly places in the commission's hands the determination of what constitutes exceptional circumstances and conditions justifying the lower charge for the longer haul.

Respectfully submitted.

WM. R. WHEELER,  
*Manager Traffic Bureau of the  
Merchants' Exchange of San Francisco.*

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# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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## PART XXIV

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman*.

IRVING P. WANGER, PENNSYLVANIA.  
FREDERICK C. STEVENS, MINNESOTA.  
JOHN J. ESCH, WISCONSIN.  
CHARLES E. TOWNSEND, MICHIGAN.  
JAMES KENNEDY, OHIO.  
JOSEPH R. KNOWLAND, CALIFORNIA.  
WILLIAM P. HUBBARD, WEST VIRGINIA.  
JAMES M. MILLER, KANSAS.  
WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.  
CHARLES G. WASHBURN, MASSACHUSETTS.  
WILLIAM C. ADAMSON, GEORGIA.  
WILLIAM RICHARDSON, ALABAMA.  
CHARLES L. BARTLETT, GEORGIA.  
GORDON RUSSELL, TEXAS.  
THETUS W. SIMS, TENNESSEE.  
ANDREW J. PETERS, MASSACHUSETTS.



## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

The CHAIRMAN. The following letters, communications, etc., may be printed in the hearings:

INTERSTATE COMMERCE COMMISSION,  
*Washington, March 4, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives.*

MY DEAR SIR: Complying with your request of the 3d instant, the Interstate Commerce Commission has considered the proposed amendment to the Townsend bill, referred to by you, and it is of the opinion that the one, in the following words: "But this act shall not be construed to affect traffic originating and ending on the line of any water carrier," is intended to leave the traffic wholly by water, as the commission understands the law, where it is now—free from control of the act to regulate commerce and without jurisdiction of the commission. The commission sees no objection to this, but begs to suggest, in order to confine the amendment to the accomplishment of this purpose, that there should be added to the words above quoted the following: "And transported wholly by water." The amendment will then read: "But this act shall not be construed to affect traffic originating and ending on the line of any water carrier and transported wholly by water." This suggestion is made because it might not infrequently happen that the entire through route would be composed of a rail line in the center with initial and delivering water service which might be performed by the same water carrier.

The second proposed amendment, in the following language: "This act shall not be held to affect the limitation of liability of water carriers or water transportation as now provided by law," is, as we understand it, intended to leave the liability of water carriers as now existing; however, that may be effected by the Harter Act and Carmack amendment. We see no objection to this, and it seems that the language proposed is in all respects appropriate to the end intended.

We take the liberty of calling attention to the following words: "A court of competent jurisdiction," in lines 17 and 18 on page 18 of the committee print of the Townsend bill, which are a part of the language of the present statute relating to proceedings to enjoin the enforcement of an order of the commission. It would seem that if a court of commerce, having exclusive jurisdiction over these

matters, is to be established, it would be better to substitute for the language above referred to, the following: "the court of commerce."

Very respectfully,

MARTIN A. KNAPP,  
*Chairman.*

JOHN SPRY LUMBER COMPANY,  
*Chicago, February 17, 1910.*

HON. JAMES R. MANN,  
*Washington, D. C.*

DEAR SIR: As we have heretofore had more or less correspondence in reference to different legislation, I take the liberty to write you and tell you the condition of things here as I see them. There seems to be absolutely no confidence in the Government at the present time. The people do not know what to expect; that is, when I say the people, I mean the people I come in contact with.

We expected an immense trade from the railroads. The railroads have absolutely stopped buying, except their actual wants. Now, as the railroads are the great distributors, let them stop buying and business virtually stops. At the present time the railroads we do business with have actually stopped buying, just the way they did twice before in the last ten years, and both times panic followed within a short time. I do not care how prosperous the country is if the railroads stop doing business that settles the prosperity at once, or within a short time.

I do not believe any harm can be done by eliminating much of the proposed railroad legislation and give the railroads an opportunity to work out themselves. They understand what the administration demands, and the chances are, beyond a doubt, they will work it out themselves. At any rate, at the present time, under existing conditions, I hope you will do your best to call a halt on radical railroad regulation in this Congress. Things have been getting worse continuously for the last two months.

I write you in this way regardless of the merits or demerits of the proposed legislation. The railroads are our great distributors, and it has come to a point where Congress has got to let them alone at the present time or the consequences will be with the Republican party, and we can only judge the future by the past.

I do not care for an answer to my letter. I merely want you to know the sentiment of the people the way I find it.

Yours, very truly,

S. A. SPRY.

WASHINGTON, D. C., *February 19, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and  
Foreign Commerce, Washington, D. C.*

DEAR SIR: With leave had at the hearing February 7, I forward to you a copy of the remarks I would have made, with a form of amendment, relating to bill of lading House bill 17267.

Inasmuch as the hearings have been closed, this is the only course left open to me to file remarks.

Yours, very truly,

DANIEL H. HAYNE.

*Memorandum submitted by Daniel H. Hayne, of Baltimore, Md., on House bill 17267, relating to bills of lading.*

[Filed with leave had and obtained at the hearing Feb. 7, 1908.]

*To the Chairman and Members of the Committee on Interstate and Foreign Commerce, House of Representatives:*

With the permission of the committee I respectfully submit a few of the reasons which should be carefully considered in passing on House bill 17267, relating to bills of lading.

I appear in a personal capacity, representing no special interest and having no policies influencing my action except in assisting in whatever humble way I can in the correct solution of this matter.

The principles are all more or less familiar to me in view of the work as chairman of the committee which prepared the revised standard bill of lading and appearances made before state legislatures, relating to negotiable bills of lading acts there submitted.

In my investigations, I was impressed with the magnitude of the bill of lading contract which involved in the field where the revised standard form was to apply, property value of over \$3,000,000,000 daily, and in all of the States over \$15,000,000,000 daily.

The difficulties of this committee in pronouncing decision on such an important question are fully appreciated, and I am satisfied that the committee is seeking to find what is fair and right and will firmly adhere to it.

It should be borne in mind the carrier has not alone accepted the burden of the surrender clause in the bill of lading, but has further accepted the enormous burdens of all mistakes in delivery after receipt of the goods which are so great as to make the proportion of mistakes in issuing a bill of lading before receipt of the goods negligible.

The objections from a practical point of view have been fully presented. The following is addressed to securing real helpful legislation to the banks and public, and still not transgress the limits prescribed by the Constitution by conferring upon the bill of lading the character of a bill of exchange, and therefore a negotiability not permissible to apply to a bill of lading as shown in *Shaw v. Merchants' National Bank of St. Louis* (101 U. S., p. 557); and when it is not the intention to use it as such, but merely to use it as a collateral to accompany the draft or note. In other words, it was never intended, and is not now intended, to send two fully negotiable instruments having the same characteristics in the same transaction.

The main legal defects in the bill may be considered under:

#### CONSTITUTIONALTY AND THE CONSIDERATIONS RELATED THERETO.

It may be gravely doubted that the act is constitutional:

First. It is a needless and improper interference with the right of private contract.

Second. Allied to this proposition is the relation between the States and the Federal Government.

The effort in this bill is to confer upon the bill of lading the main essential element of a bill of exchange, i. e., to cut out all equities between prior holders when accepted by the banks, and it will then be cognizable as an instrument outside of interstate regulation. So con-

strued the unconstitutionality of the proposed act is plain. (See *Nathan v. Louisiana*, 8th Haw., p. 73.)

Third: It partakes dangerously of the elements of class legislation prohibited by the Constitution.

Fourth: Its ramifications, which must follow into the network of all commercial transactions, if not pernicious, are at least mischievous and fraught with danger.

To reverse the present doctrine and say a principal is responsible for the unauthorized act of his agent is a new proposition. If it is sound here, why not apply the doctrine broadly and generally? The law-making power and the courts would be powerless to withstand the reasoning seeking such conclusion, and I apprehend the most pronounced objection to such a law would come from the banking interests themselves should they be held responsible for the act of an agent who acted contrary to his well understood grant of power. Whatever may have been the supposed power of an agent authorized to issue bills of lading, it is universally now known they have no power to issue a false bill.

Certainly the public, generally, would find a boomerang of the most injurious and harmful character.

Witness the following clippings from the *New York Evening Post*, dated March 6, 1909:

The Chamber of Commerce of Rouen, France, has just issued a report concerning the abuses which have resulted from the employers' liability law, passed in 1898. This was intended merely to cover ordinary accidents to labor, but its sense has been extended to domestic servants, and a valet who should fall downstairs and break his leg would be legally entitled to claim damages from his employer.

Now there is hardly an accident which does not fall under this rule. In the metalurgical and building trades the increase in accidents, causing permanent incapacity, is 100 and 250 per cent, respectively. In these cases the employer has to pay a yearly pension for life.

How could we, with reason, concede, on a broad and general view of such a question, the right of any special interest to undertake to dictate or influence what should be the character of the contract between the contracting parties to which such third interest was in no wise a party?

If in this instance it is proper it would be proper for any contemplative assignee to dictate and hold up the terms of the contract until it was satisfactory to him.

In general commercial transactions it would be properly suggested that all assignees were at liberty to take or refuse such contracts, but they would have no right to influence their terms.

The means open to any assignee to determine the force and effect of a contract is likewise open to the banks.

In purchasing a piece of property the search of title must be made.

In accepting a bill of lading the inquiry can be made as to the actual delivery of the goods to the carrier. They are all designated by marks, and this is true wherever the draft is to be paid. In the instance of the transaction being made in the same city direct inquiry may be made at the shipping point, and in the instance where such contracts are taken for collection the draft is presented for payment days, weeks, or even months before the arrival of the goods. There is no requirement to pay the draft until the arrival of the goods, and in practice the drafts are not paid until arrival of the goods.

There is ample opportunity open to the banks if they choose to actually see the goods, and one which, if applied, will not require reversal of the present laws.

Another very important reason why special laws should not be attempted at this time is that the whole question of transportation is being considered through bills now pending before Congress, and this being accomplished, much of the errors and confusion will be altogether avoided.

I urge, therefore, that bills of this character should remain subordinate to the general comprehensive legislation being sought on these questions.

If it is insisted that some bill should pass relating to bills of lading then I would suggest the bill be amended in the following respects:

I inclose the bill with the notations thereon as a supplement hereto. The amendments are:

#### CLASSIFICATION OF THE PROPOSED AMENDMENTS.

These amendments effect the following changes:

1. Changing section 3, section 5, and section 7, by eliminating the carrier from all the penalty clauses, but the officers, agents, or servants of the carrier are not eliminated.

2. Changing section 3 and section 7 to include the shipper or the acceptor of bills of lading in the penalties. In the fifth clause such parties were included, but in the sections here referred to they are omitted.

3. Changing section 4 by eliminating all language seeking to hold the carrier responsible for freight represented by a bill of lading issued by an agent without authority.

4. Changing sections 4 and 5 by amplifying the word "duplicate" to include "other words of similar import."

5. Changing sections 5 and 6 to adjust the measure of damage chargeable against the carrier for any mistake of any of its officers, agents, or servants, to the contents of the bill of lading according to its original tenor and effect, instead of attempting to include all damages of a speculative nature.

6. Changing section 7 by reducing the penalty against the officers, agents, or servants of the carrier for mere clerical errors from \$5,000 to \$500, but leaving all the penalties for fraudulent or dishonest acts at \$5,000. The civil remedy for all damage is prescribed in clause 6.

7. Changing section 7 to include "or other lawful purposes."

A change is suggested in section 7 by adding "properly indorsed." This omission was a plain oversight.

8. Changing section 8 making an alteration in a bill of lading valid only when signed by the party who originally issued the bill of lading, with the consent of the holder thereof.

In explanation of the foregoing suggested amendments, we may simplify their consideration by first considering such of the changes as should be made without question, namely, suggested amendments Nos. 2, 4, 6, 7, and 8.

Suggested amendment No. 2 has to do with the inclusion of the other party to the contract. It seems to be unfair and unwise to attempt to include the carrier's agents without also including the other party in effecting the contract, when the faults are on both

sides and more especially on the side of the shipper who comes substantially indorsed by the bank and stamped as an honest man. If the penalty clauses against the individuals are omitted it lays the doors open to increased abuses. All the penalties against carriers in the original commerce act were useless, but the Elkins amendment penalizing the individuals was effective.

Suggested amendment No. 4 has to do only with amplifying the word "duplicate." As a matter of fact, there are now but two bills of lading used throughout the United States, namely, the uniform bill of lading and the revised standard bill of lading. These are used almost universally, and there is no necessity to use the word "duplicate" on any copies. The use of the word "duplicate" is fraught with great danger, as it is often omitted through clerical error. The "uniform" and "standard bills" of lading do not permit of such error, because, instead of the risk of omission of the word "duplicate," it is arranged that any extra copies are made on a different colored paper, which shows that the instrument is only a "memorandum," and the protection against improper issue can not be overlooked. The word "duplicate" could well remain in the act to cover isolated cases where carriers or shippers use individual forms; but the amplifying of the language to include words of similar import also covers the universal method adopted by the revised uniform and revised standard bills of lading.

Suggested amendment No. 6 has to do with the reduction of fines. It seems very unfair to impose a penalty of \$5,000 for mere clerical mistakes. Five hundred dollars is amply sufficient. Indeed, it ought to be very much less, as the burden of such fines would often fall on one who is not able to bear such heavy fines for the usual, everyday business errors which are bound to occur. Full civil remedy is still preserved as against the carrier in clause 6, so there is no injustice done.

Suggested amendment No. 7 includes a saving clause to protect against too narrow specialization.

Suggested amendment No. 8 has to do with the means of valid alteration of bills of lading. It seems very unwise to permit alteration of an original instrument by anyone except those who originally issued the bill of lading with the consent of the holder thereof. If any agent of the issuing carrier is to be authorized by law to make a valid alteration in a bill of lading, neither the carriers nor the banks would be protected against the precise conditions which are attempted to be covered in this act in other places. A little thought on this point will show that the section is ill-advised and unworkable. The suggested change in No. 8 seeks to apply the understanding reached in the alteration clause of the bill of lading, known as "clause 10," and this clause was worked out by the shippers, the carriers, and the banking interests in concert.

This leaves suggested amendments Nos. 1, 3, and 5, for consideration.

Suggested amendment No. 5 may well be considered alone. In all the discussion had on the framing of bills of lading between the shippers, the carriers, and the banks, the language finally accepted was that the carrier should be responsible for the contents, or the value of the contents, of the original bill of lading according to its original tenor and effect. But in this act attempt is made to depart

from those words and include all damages and whatnot of every nature and description. The words of the act are indefinite, and also may have the possible construction holding the carrier for more than it should be held under the contract. A carrier should be required only to transport and deliver the property, or, failing to deliver the property, to deliver the value thereof, and any additional loss the owner can fairly show. Suggested amendment No. 5 carries out the clear understanding had between the shippers, the carriers, and the banks during the discussion of the form of the bill of lading which was finally recommended by the Interstate Commerce Commission, and that language should be adhered to.

Suggested amendments Nos. 1 and 3 should receive the most careful consideration. Matters of public policy and the constitutionality of the act are involved. The act seeks to impose penalties on the common carrier when the causes are attributable to individuals. There has been nothing gained by the attacks upon carriers per se; but much unnecessary loss has been made to the innocent stockholders in such corporations through the imposition of penalties for offenses for which such stockholders were in no wise responsible. The remedial purpose of the legislation will be fully accomplished by making the penalties applicable to the individuals who are involved in any violation of the act. The amendments included in suggestion No. 1 place the penalties where they should be, and relieve the innocent owners of losses for which they are in no way responsible, and where they have no means of protection against them.

The stockholders of these companies are largely individuals, trust estates, and in one notable instance of one of the largest railroads in this country, the stockholders are mostly women.

Suggested amendment No. 3 should be adopted for the following reasons:

The common carrier, being the distributor of goods between communities, permitting the interchange of commodities, is the primary source of national prosperity. The difference between cheaply made commodities in one section, interchanged with cheaply made commodities in another section, is perhaps the primary element of national wealth. Any legislation which harmfully and unjustly affects the common carrier is mischievous, and is indirectly an attack made upon the public. Not the least is the destruction of initiative on the part of those who are concerned with these great enterprises.

The carrier's assistance in the general welfare is therefore not to be lightly considered.

The welfare of the carrier and interests linked to it is another instance calling for caution. Starting with the direct employees, they are, according to recent statistics, in excess of two million. Those who have their funds invested are also an exceedingly large class and composed frequently of estates, women and orphans. Another direct dependent is that large class of supply interests whose welfare is closely linked with transportation, some wholly dependent upon it. The banks themselves acknowledge a very large and lucrative business as a result of the voluntary act of the carrier in accepting the great hazards of "order" shipments, which is distinctly not an incident of the act of carriage, but has been made so to accommodate others. It seems safe to say that more than one-

tenth of the entire population is in some measure entirely dependent on the carrier.

The following bearing should also be considered:

#### WATER CARRIERS.

It will be noted that the bill as drawn includes "any common carrier, railroad or transportation company," etc. This covers water transportation between the States and between the States and a foreign country, whether the carrier be a common carrier or a private carrier.

The transportation of goods "from or between ports of the United States and foreign ports" by vessel is now fully covered by special laws affecting navigation alone and requiring the giving of bills of lading or shipping documents, and the stating therein of specific facts as to marking, number of package, quantity, weights (whether shipper's or carrier's), apparent order and condition, etc. These laws also prohibit the insertion of conditions, agreements, or clauses affecting liability from certain causes, and the conditions under which such carrier shall not be answerable for loss or damage resulting from "faults or errors in navigation or in the management" of said vessel. (Harter Act, Feb. 13, 1893.)

Since the beginning of this country, transportation by land and by water have been treated as essentially different, requiring different legislative measures. The line of demarcation, so long as it is a transportation question, has been drawn at the shore line, and should remain there, and this bill, or any bill, if to be enacted, should exclude from its provision transportation by water.

This is a popular demand, and may be said to be one of the policies nearest the hearts of the people. They are aiming to remove burdens on their shipping, not to add them, as witness the subsidy movement, and that toward open and free waterways.

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#### THE MARITIME ASSOCIATION OF THE PORT OF NEW YORK, New York, February 23, 1910.

Hon. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: I beg to hand you below resolutions adopted by the board of directors of the Maritime Association of the Port of New York at a special meeting held this day, viz:

Whereas Senate bill 5106 and House bill 17536, now pending before Congress, and known as an administration measure, provides, among other things, "that whenever the carriers themselves shall have refused or neglected to establish voluntarily such through rates or joint classifications or joint rates, and this provision shall apply when one of the connecting carriers is a water line;"

Whereas it is manifest that any law that has in its effect the limitation or restriction of American shipping will result in the destruction of the rail and water differential basis in injury to a great mass of the people of this country and an injustice to investors of a large amount of capital;

*Resolved*, That the Maritime Association of the Port of New York strongly protests against the passage of this section of the law for the following reasons:

First: Water transportation is the rate regulator to practically the entire country, serving as it does the ports of the Atlantic coast, Gulf coast, Pacific coast, the Great Lakes, and up and down all navigable rivers.



Second: While rate regulation has had the desirable effect of removing, to a great extent, unjust discrimination against various classes of shippers, it has also resulted, through the consequent consolidation of ownership of railroads, in a much less flexibility in rail-rate schedules. To establish this same control over all the water carriers, not only as to the rail and water traffic, but as to port-to-port traffic, will unquestionably result in a similar inflexibility in these rates and in the consequent deterioration of service; and be it further

*Resolved*, That a copy of these resolutions be sent to the Senators and Members of Congress from this State and to Hon. S. B. Elkins, chairman Senate Committee on Interstate Commerce, and to Hon. James R. Mann, chairman House Committee on Interstate and Foreign Commerce.

Trusting that the foregoing will receive your favorable consideration, I remain,

Very respectfully, yours,

C. R. NORMAN,  
*President.*

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BOARD OF TRADE AND BUSINESS MEN'S ASSOCIATION,  
*Norfolk, Va., February 25, 1910.*

Hon. JAMES R. MANN,

*Chairman House Committee on Interstate and  
Foreign Commerce, Washington, D. C.*

SIR: The accompanying resolutions, which are self-explanatory, were passed to-day at a meeting of the committee on legislation of this body, and in accordance therewith I am carrying out the provisions therein.

It is the earnest desire of the committee that you give this matter your serious consideration, as coming from a port which probably would be as seriously affected as any Atlantic port, if this bill were adopted.

Trusting that I may be advised of your favorable action on these resolutions, I am,

Yours, very truly,

JOSEPH A. HALL,  
*Secretary.*

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Whereas the attention of this body has been directed to bills now pending in Congress, Senate bill 5106, introduced by Senator Elkins, and House bill 17536, introduced by Mr. Townsend, proposing to amend section 15 of the "act to regulate commerce," as amended June 29, 1906; and

Whereas, if said amendment shall be enacted into law, it will give the Interstate Commerce Commission jurisdiction over American coastwise shipping in their local port-to-port traffic:

First. The steamship lines are the rate regulators of practically the entire country, serving, as they do, the principal port cities of the Atlantic, Gulf, and Pacific;

Second. If the private carriers, tramp steamers, and sailing vessels are allowed to make rates ad libitum, and without notice, and the regular coastwise steamship lines are forced to give statutory notice of thirty days before any change can be made, it is manifest that the regular lines can not exist, and their abandonment means the destruction of the differential rate basis and deprives the port cities of the regular service which they have so long enjoyed, and takes from the shipping and traveling public the economy of water transportation: Therefore be it

*Resolved*, That the legislation committee of this body desires to go on record as being opposed to any legislation which will restrict the merchant marine or deprive this port of the advantages which accrue to it from the regular coastwise steamship service.

*Resolved further*, That a copy of this resolution be sent to Senator Elkins, chairman of the Senate Committee on Interstate and Foreign Commerce; to the Hon. James R. Mann, chairman of the House Committee on Interstate and Foreign Commerce, and to the Senators and Members of Congress from this State, with the request

that they will do all possible to prevent the enactment into law of that which can only result in injury to a great many of the shipping public of this country and an injustice to those who have invested large capital in American shipping.

*Resolved further*, That the secretary be instructed to furnish copies of this resolution to various trade organizations interested in traffic at Atlantic ports, with the request that they take similar action.

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THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,  
*St. Louis, February 26, 1910.*

HON. JAMES R. MANN,  
*Chairman House Committee on Interstate Commerce,*  
*Washington, D. C.*

DEAR SIR: Referring to House bill 17267, a bill relating to bills of lading, introduced by Mr. Stevens, I find therein in section 4 a provision which may be construed as relieving carrier from liability for loss or damage where shipments are forwarded on bills of lading reading "shipper's load and count," although properly may have actually been delivered to the carrier.

I do not believe it is the purpose to relieve the carrier from loss or damage where shipments are forwarded on such a bill of lading, "shipper's load and count," and the property was actually delivered to the carrier, which of course would be a matter of proof. I would therefore suggest, for the consideration of your committee, a correction in the last paragraph of section 4, by substituting for all of the words after the word "provided," in said last paragraph, the following:

*Provided*, That where an order or a straight bill of lading is issued for property billed "shipper's load and count," indicating that the goods were loaded by the shipper, and the description of them made by him; and if such statement be true the carrier shall not be liable for the nonreceipt or by the misdescription of the goods described in the bill, in which event the estoppel and liability above provided shall not attach.

It is absolutely necessary at times, by reason of the location of the industry or the location of the team tracks, for shippers to load cars under their own supervision, and without the service of an employee of the carrier to check the freight into the car and to issue a receipt or bill of lading accordingly. Under such circumstances it is the practice to forward such carload shipments with notation on bill of lading "shipper's load and count."

If a misstatement is made by the shipper as to the contents of the car forwarded under such conditions, then I do not believe carrier can or should be held liable for the misstatement of the shipper; but if, however, the statement contained in the bill of lading as to the number of packages and description thereof as made by the shipper is a fact, which fact no doubt would have to be proven, then the carrier should be held liable for any loss, the same as though it had actually checked the goods into the car and issued receipt accordingly. I fear the present wording would relieve the carrier of liability.

The suggestion I have made is in line with the language employed in section 23 of "An act to make uniform the law of bills of lading," as recommended by the commissioners on uniform state laws. (See pp. 239-240 of the inclosed pamphlet.)

Yours, truly,

J. C. LINCOLN.

WASHINGTON, D. C., *February 26, 1910.*

DEAR MR. MANN: Inclosed herewith please find copy of letter from Messrs. Farley, Harvey & Co., Boston, Mass., in regard to House bill 1491 before our committee.

Yours, sincerely,

C. G. WASHBURN.

Hon. JAMES R. MANN,  
*House of Representatives.*

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BOSTON, MASS., *February 24, 1910.*

Hon. CHARLES G. WASHBURN,  
*House of Representatives, Washington, D. C.*

DEAR MR. WASHBURN: On account of several disagreeable experiences we have had with railroad companies, we beg to ask if you will give earnest consideration to House bill 1491 in the matter of definition of the status of sample parcels. We are tired of having it thrust upon us by railroad companies that samples are not baggage, and are carried solely by courtesy, while the railroad companies at the same moment are charging very heavy excess-baggage rates for the transportation.

As an illustration of the fact, we give you an instance of the annoyance their rulings cause. At one time a sample trunk, belonging to us, was taken out of the baggage car at one of the stations of the New York Central and left by the railroad employees standing on the rails of a parallel track, where shortly an express train struck it and destroyed it and its contents entirely, although checked and in the hands of the railroad company at the time. Although we had paid the excess rate levied upon it, the railroad company annoyed us for more than a year before they would give us any satisfaction, and then compensated us only to a very meager degree. This was all done under the rulings that samples are not baggage. They make it practically impossible for us to send samples by freight, although they claim samples should be so considered, by the requirements that if sent by freight they must be cased or crated. You can imagine the impossibility of casing or crating sample trunks in connection with forwarding them from city to city through the country, even where there are express freight trains that might transport them, as is sometimes the fact. Considering the fact that railroad companies in practice do carry sample trunks as personal baggage and are dependent for a very large income upon the transportation of sample trunks as baggage instead of as freight, we utterly fail to see the logic of their opposition to giving sample trunks a legal status as baggage. We only know that when an accident occurs they use the argument that samples are not baggage as an annoyance, always surrendering ultimately when confronted by lawyers or business associations who insist upon a fair settlement of damages on the merits of the case.

We certainly hope that you will use your influence as a member of the Interstate and Foreign Commerce Committee to see that the merchants of the country are placed on an intelligent footing in the matter.

Yours, truly,

FARLEY, HARVEY & CO.

WASHINGTON, D. C., *February 28, 1901.*

HON. JAMES R. MANN,  
*House of Representatives.*

DEAR SIR: Herein I beg to hand you a letter from Mr. W. L. McCormick, president of the McCormick Grocery Company, of Eufaula, Ala. You will note he states in substance that his company sells goods to retailers at different points on the railroads; that frequently when the goods arrive at their destination the consignee refuses to receive the goods; that the law does not require the railroad to give notice of such failure to receive the goods, and the shipper is frequently charged with storage and demurrage when he at last finds out of the nondelivery of the goods. It also sometimes happens that perishable goods are not delivered, and the shipper does not find out such nondelivery until the goods are a total loss.

I trust that you will remedy the matter complained of in Mr. McCormick's letter in some of the proposed legislation now pending before your committee.

Yours, very truly,

H. D. CLAYTON.

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EUFULA, ALA., *February 26, 1910.*

HON. H. D. CLAYTON,  
*House of Representatives, Washington, D. C.*

DEAR SIR: While the interstate-commerce law is before the House for revision it occurs to us that this is an appropriate and opportune time to remedy by amendment a minor, but nevertheless important, phase of the present law.

Under the existing law common carriers are not required to give notice to shippers of the refusal or rejection or failure to accept and remove shipments made in interstate business. The shipper simply finds this out for himself the best way he can, although local railroad agents do sometimes, as an act of pure courtesy, send written notice to shippers of such refused shipments on the part of the consignee. This act of courtesy is more frequently performed where competitive lines exist. While the shipper is finding out for himself that his goods are refused, storage or demurrage charges are going on daily. The shipper has these charges to pay and there is no redress, although he has not been served with notice and given opportunity to make disposition of his goods or order returned.

We have had some recent experience of this sort. We set up claim that we did not owe the charged amount, as no notice was given us. But we had it to pay, and the point was made that the law did not require such notice to us as shipper when in interstate shipments.

This state of things appears to be more of an omission than otherwise, and we feel sure you can succeed in amending the bill as needs to be.

Respectfully, yours,

McCORMICK GROCERY CO.,  
Per W. L. McCORMICK,  
*Vice-President.*

*Memorandum submitted by Daniel H. Hayne in re water routes.*

NOTE.—The commission has not in its reply intimated that section 9 of the proposed acts does not reach to the local business of water lines. That it does so in fact, see pages 18, 19, and 20 of main brief.

Also kindly refer to commission ruling shown on page 20 of main brief, which shows how the commission construes such laws.

The Interstate Commerce Commission, in reply to brief presented for water lines, says:

We are convinced that the authority to require such water lines as may be necessary from time to time to the formation of reasonable through routes, to the extent that such are essential to the reasonable service of the public, will entail no unreasonable hardships nor burdens upon the water lines.

Has this committee been advised or does any member know of anything "essential to the reasonable service of the public" which at this time calls for this change in a policy long and constantly followed or which has not been conceded in the amendment proposed by the independent water lines?

No commercial body, no shipper, no one save an unnamed, uninvestigated water carrier has favored the change.

Is that sufficient ground to induce Congress to reverse an established policy to let water carriers alone until the rail rate situation is more clearly defined, and when the briefest examination of the testimony of the members of the commission called before the committee clearly shows they have not fully considered the question?

May we not fairly ask, Who wants this change?

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WASHINGTON, D. C., *March 1, 1910.*

DEAR SIR: I have received the following letter from the Attorney-General:

FEBRUARY 28, 1910.

DANIEL H. HAYNE, Esq.,  
*The New Willard, Washington, D. C.*

DEAR SIR: I have your favor of the 24th instant, with respect to the water lines. The subject is one which is in the hands of the House Committee on Interstate and Foreign Commerce, but as to which I have not had an opportunity to give any careful consideration and study, and therefore I do not feel like taking up the matter now. I therefore advise that you address yourself to the House committee, which is prepared, I understand, to give consideration to the subject.

Faithfully, yours,

(Signed)

GEO. W. WICKERSHAM,  
*Attorney-General.*

In the latter part of his letter the Attorney-General refers me to the House committee, which is prepared, as he understands, to give consideration to the subject hereof.

I should explain to you that the reason I took the matter up with the Attorney-General was that I was in hopes of saving the committee some labor in the consideration of this matter, in getting the administration to take it up, but it will be noted the Attorney-General states that, as the matter is now in the hands of the House committee, we should properly be referred to that committee, and he states that he has not had an opportunity to give any careful consideration and study to the matter involved.

This presents the matter exactly as I understood it to be, viz, that the administration has not gone into this matter. It is inconceivable that the administration, in endeavoring to pass what it believes to be a popular measure, would oppose the popular will in respect to the water routes in the way in which the proposed legislation involves them.

The matter is most forcibly presented that this legislation is working through without a full consideration as to where it will ultimately land. It should not be lost sight of in this discussion that the administration's anxiety directed toward passing its measures without amendment can certainly not reach such a dangerous involvement of water routes when there is no popular request to disturb them, and where, on the other hand, popular request is not to disturb them at this Congress and not to pass any hurtful legislation affecting them without the opportunity for the fullest investigation.

In respect to the unpopularity of the administration's measure relating to its effect on the independent water routes, I am advised that resolutions have been passed in Boston, Providence, New York, New Bedford, Philadelphia, Baltimore, Newport News, Norfolk, Savannah, Wilmington, N. C., Jacksonville, Mobile, Denver, Cincinnati, Pacific coast points, and Great Lake points by the various commercial and trade organizations, and that every day popular dissatisfaction with this element in the proposed administration amendment is being manifested in resolutions and newspaper notices.

The effort directed toward rail regulation may be justified by a popular requirement, but this amendment, leading into such disastrous results to the independent water routes of this country, is not favored by the people, and it should not be put through without giving an opportunity to see whether the people want it. Certainly the request of one or more departments of the Government should not form the basis of radical legislation of this kind, and especially since it is in the teeth of the popular will as expressed in prior Congresses.

What the independent water lines ask (and we believe their request is backed by the mighty protest of the people) is that their statu quo under the present law be maintained until there can be a full, careful, and intelligent investigation of the water question to determine how far legislation should go in the interest of the people.

It has been our privilege to read the reports of the committees, and we notice that the request was made on some of the members of the Interstate Commerce Commission to reply to the case made up for the independent water-line interests, and I trust that interest may have an opportunity to answer any statement made by the commission.

Of course it was a foregone conclusion that the Interstate Commerce Commission desired this power, as expressed (1) in the Enterprise case in 1908; (2) in the way in which this amendment was incorporated in the proposed bills; (3) in the action of certain governmental departments taking the wishes of the commission as an expression of the demands of the people; (4) in the testimony of the commission before the House committee; and (5) in the general effort of the commission to extend its power over water lines, as shown in its ruling B No. 2, May 4, 1908, where it held that being under the act

for through business placed the water lines under the commission's power on local business.

We have no hesitancy in saying that the commission should not be given such a power without the definite and decisive demand of the people, nor do we believe it is the intention of the administration to force through such an unpopular law.

I take the Attorney-General's letter to mean that the administration would not disapprove of the change being made in the law to hold the water position in statu quo until the Attorney-General and others in the administration can have had an opportunity to give careful consideration and study to this question, and until the committees have before them all the facts and the attitude of the public on this great question.

It seems, in view of all this, that the plea of the independent water lines that the effort to regulate water lines in these proposed bills has not found a sympathetic chord in the popular will; that, therefore, the step should not be taken at this Congress. The amendment offered by the independent water lines will accomplish this in defining the power as to (a) through routes; (b) that the local traffic is not molested; and (c) that the great marine statutes are not repealed; for it should be noted that notwithstanding there are these two other important elements included in that amendment, viz, that the repeal by implication of the great marine statutes is not to be accomplished by this proposed legislation, and that the legislation is not intended to affect the water haul of the water routes; not a single word is said in regard to those two very important elements.

I appeal to you in the interest of the people that this amendment be made, at least so the matter can come up in the conference reports to be looked over again, for as the matter stands the Senate committee has already reported the proposed bills without amendment, and I verily believe the water element is being inadvertently and hastily carried through in a measure which is aimed entirely at rail conditions.

We particularly request that you do not interpret the administration's attitude in putting through the railroad element of the bill under emergency conditions as relating at all to any anxiety to involve the water routes to their detriment. The Attorney-General's letter frankly states that he has not had time to look into this matter, and it is expected that the House committee will give full and careful consideration to the subject, and meet the views of the independent water lines if it deems it wise to do so without any reference to the administration's view as to the necessity of reporting the bill otherwise without amendment.

Had the independent water lines and the vast shipping interests dependent upon them known it would have required anything more than the mere statement of the situation to carry conviction of the soundness of their position, an immense delegation would have been in Washington in the interest of the independent water lines. Under the pressure being put forward to put these bills through without amendment some such action seems to be necessary now, and instead of the request of one or two dissatisfied water lines seeking to alter the whole policy of the law we are positive of being able to show that this action is not approved by the people of this country, regardless of sections or localities.

I feel sure your interest in the public welfare is such that you would expect me to state conditions exactly as we see them, and these interests are under great obligations to the care and consideration given by the House committee to this matter. It is the only place where we have as yet received anything like a full and satisfactory hearing. This is my personal view, but I state it without reserve.

Very sincerely, yours,

DANIEL H. HAYNE,  
*Chairman meeting of Independent Water Routes,  
held at Washington, D. C., February 1, 1910.*

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CHICAGO, March 1, 1910.

MY DEAR MR. MANN: I have had several letters from you in regard to railroad legislation, and I am going to ask as a special favor to us that you be good enough to read the article in our February Bulletin, page 4, and if you are sufficiently interested in the subject I should be very glad indeed if you would ask Hon. M. B. Madden to loan you the collection of papers we gave him last year on the subject of legitimate railroad rebates.

The article I am asking you to read and the papers in Mr. Madden's possession will indicate to you why we are so materially interested in this legislation. Our sales are made largely to the Government, States, and municipalities, and all our products are sold at delivered prices, the freight being a very material portion of the ultimate cost, and we are confident that no railroad company would attempt to make a rebate by giving the wrong tariff if a claim for adjustment had to be through the Interstate Commerce Commission.

In the administration bill, H. R. 17536, the President expresses a desire to fine a railroad for an error made in quoting a rate, but there is no compensation to the shipper who has lost the money. I know you have given railroad legislation a great deal of attention, and trust you will bear with me when I cite to you a case illustrating the difficulties of the manufacturers and merchants.

We bid on about 1,000 tons of material for the use of the Government; asked a railroad for the rate and were quoted \$11 per ton. Our traffic manager, who we consider an expert, had already checked this as the proper rate. We were awarded the contract. When the order was sent to our works, following our usual custom, our shipping clerk applied to the local agent for a rate; he telegraphed the division freight agent and it came back checked \$11 and the shipment started forward. After a few cars had gone a solicitor for the railroad came to our traffic manager and told him he was making a mistake in his routing, and that if he routed the material by another gateway the rate would be lower. Our traffic manager asked him what the lower rate would be and his reply was \$14.90. It is needless to say that our traffic manager got very busy. To protect himself he first went to obtain the opinion of the traffic managers of two of the largest manufacturers in Chicago. Both checked \$11 as the correct rate. Fortified with these opinions he called on the general freight agent and laid the case before him. He admitted that it was too complicated a question for him and sent for his expert, who, after examin-



ing the sheets, said that both rates were in error, that the proper rate was \$14 per ton. It resulted in the railroad company sending one of their representatives to our office to go over our files and satisfy himself that we actually sold the material based on the rate they gave us, \$11, and they permitted the shipment to go forward on this construction.

I could cite other cases where every possible care had been exercised by us as shippers but where errors have been made which we were not competent to correct and in some cases after reference to the Interstate Commerce Commission have been corrected and refund made, but only after long delays.

It is impossible for any railroad company or organization to employ men who do not make mistakes, and we have no desire to penalize a railroad to a greater extent than the loss entailed, but we want the money that we have lost; we do not want any portion of it given to the United States Government. In the case I have cited, had the railroad company wanted to be unfair they could have forced us to lose about \$2,100. It is very doubtful if we could have recovered the money through the Interstate Commerce Commission. What use would a fine of \$250, payable to the United States Government, had been to us?

The President is reported to have said that any other method than that suggested in the administration bill opens the way to rebates. There is no one opposed to rebates more than the railroads. No action the Government has ever taken has done the railroads and the people as much good as the stopping of rebates. If every claim for an error made must be filed with the Interstate Commerce Commission thirty days before its payment and the fine for an illegal rebate remains as it is, there will never be a railroad in this country that will break that law. A rebate for a large amount would instantly attract the attention of the commission and so would rebates of frequent occurrence for any particular company, and the highest officials of the railroads would not for a moment permit rebating to be practiced with such a fine as the Government justly demands.

I come to you urging that you protect the shipper and trust the railroads to give the claimant no more than he deserves and make the fine apply to shipper and railroad alike, \$20,000, if you please, for an illegal claim, and applying both to the person receiving it and the railroads paying it, but let there be a fine only when there is a criminal act.

I am sending a carbon of this letter to Mr. Madden and Mr. Foss, as both know how interested we are in this subject, and I assure you it is an extremely important one to every shipper whether their tonnage be large or small.

Sincerely trusting this suggestion may meet with your approval,  
I am,

Very truly, yours,

W. E. CLOW,  
*President.*

Hon. J. R. MANN,  
*House of Representatives, Washington, D. C.*

INTERSTATE COMMERCE COMMISSION,  
*Washington, March 1, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives.*

MY DEAR SIR: Referring to your verbal request of a few days ago, that we examine the brief filed on behalf of the water lines and certain statements made before your committee in opposition to the inclusion of water carriers in the provision of law authorizing the commission to establish joint through routes and rates: We have examined this brief and statements referred to and we are fully convinced that every consideration of public necessity and convenience which justifies the requirement of a railroad to become part of a joint through route, in connection with others, applies with equal force to water lines. We are also convinced that the authority to require such water lines as may be necessary from time to time to the formation of reasonable through routes, to the extent that such are essential to the reasonable service of the public, will entail no unreasonable hardships nor burdens upon the water lines. Therefore, without repeating here the arguments in favor of such reasonable through routes, all rail or rail and water, as from time to time may be found necessary in public interest, we adhere to our recommendation that the water lines be not excluded from this provision of law.

Yours, very truly,

MARTIN A. KNAPP,  
*Chairman.*

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WORCESTER BRANCH,  
NATIONAL METAL TRADES ASSOCIATION,  
*Worcester, Mass., March 1, 1910.*

HON. CHARLES G. WASHBURN,  
*Washington, D. C.*

DEAR SIR: Herewith please find inclosed copy of a resolution drawn up by a special committee appointed by the executive board of the Worcester branch, National Metal Trades Association.

Trusting you will give it your consideration, we are,

Yours, very truly,

WORCESTER BRANCH, N. M. T. A.

P. S.—Will you kindly draw this letter and resolution to the attention of the chairman of the Committee on Railroads?—

Whereas the purchasing power of the railroad companies has been reduced by reason of hasty and ill-considered legislation in certain parts of the country; and

Whereas some Worcester industries have been adversely affected thereby: Therefore be it

*Resolved*, That the Worcester branch of the National Metal Trades Association deprecates the hasty enactment of legislation hostile to railroad companies, and records itself as in favor of deliberate consideration of proposed legislation, to the end that fairness may be shown to the railroads, while at the same time properly safeguarding the interests of the people.

EDWARD M. WOODWARD,  
CHARLES E. HILDRETH,  
*Committee.*

FEBRUARY 23, 1910.

## INTERNATIONAL APPLE SHIPPERS' ASSOCIATION,

*Chicago, Ill., March 2, 1910.*

Hon. JAMES R. MANN,

*Chairman Committee on Interstate Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: Referring to the House bill 17267, being a bill relating to bills of lading. This bill has been under consideration by your committee, and on behalf of the association which I represent, and that association being engaged in the handling of a crop that for the current year totals approximately 150,000 carloads, I desire to protest against the last clause of section 4 of this bill.

The clause protested is that clause which endeavors to relieve the common carriers of liability under a shipper's load and count notation on their bills of lading. We protest that it is the duty of the carrier to know for what the bill of lading was issued, and that it is their duty to know that the bill of lading represents the actual count of packages within the car.

Should the provision as made in section 4 become a law the shipper would be absolutely robbed of protection, and the granting of such privilege to the carrier is but relieving them of the ordinary burden borne by every business man in the transaction of his business.

It is our belief that such legislation would be pernicious in the extreme, and that calm thought must point out to your committee the dangers that would follow its indorsement.

In the hope that before your committee reports the bill this clause may be stricken from it, I am,

Yours, truly,

WM. L. WAGNER,  
*President.*

## ILLINOIS MANUFACTURERS' ASSOCIATION,

*Chicago, March 2, 1910.*

Some of our people would like very much to have a provision inserted in the bill amending the interstate-commerce law to the effect that carriers should be responsible for the samples carried by traveling men. As I understand the situation now, the samples are neither baggage nor express, and when lost the owner is unable to recover from the railroad.

Very truly, yours,

JOHN M. GLENN.

Hon. JAMES R. MANN,

*House of Representatives, Washington, D. C.*PHILADELPHIA, PA., *March 3, 1910.*

Hon. JAMES R. MANN,

*Chairman of the House Committee on Commerce,  
Washington, D. C.*

DEAR SIR: I wish to go on record in favor of the administration bills, Senate No. 5106 and H. R. 17536, now pending before Congress, as in my judgment they are in the best interests of the water lines.

The opposition to the bills is led and being pushed by lines owned and controlled by railroad interests, who are striving to throttle the entire Atlantic coast business, and their interest is to prevent the development of all competition on the Atlantic coast. The time has come that the independent water lines must have some protection from the railroad influence, otherwise their utility or public benefit is destroyed. The indorsement of the various exchanges and others cuts no figure in this matter, as it is all brought about by the same railroad interests.

Yours, truly,

F. S. GROVES, *Agent*.

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PHILADELPHIA AND GULF STEAMSHIP COMPANY,  
*Philadelphia, Pa., March 3, 1910.*

HON. JAMES R. MANN,  
*Chairman of the House Committee on Commerce,*  
*Washington, D. C.*

DEAR SIR: I wish to go on record in favor of the administration bills, Senate No. 5106 and H. R. 17536, now pending before Congress, as in my judgment they are in the best interests of the water lines. The opposition to these bills is led and being pushed by lines owned or controlled by railroads interests, who are striving to throttle the entire Atlantic coast business, and their interest is to prevent the development of all competition on the Atlantic coast. The time has come that the independent water lines must have some protection from the railroad influence, otherwise their utility or public benefit is destroyed. The indorsement of the various exchanges and others cuts no figure in this matter, as it is all brought about by the same railroad interests.

Yours, truly,

F. S. GROVES, *President*.

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WASHINGTON, D. C., *March 3, 1910.*

HON. JAMES R. MANN,  
*House of Representatives.*

DEAR SIR: Inclosed is statement, hastily drafted, which is intended to be self-explanatory. As you have easily discovered, I am not a lobbyist. This is my first request of any legislative body; and I would not make this if it did not seem to me wholly just in particulars which in your very busy life I fear you have not been in real position to weigh.

I have mailed copy to each member of the committee. I shall not take your further valuable time. If you and your committee can see your way to consider the subject, I feel sure it must meet your approval as fair men.

In any event, I beg to thank you for such courtesy as you have shown and may show.

Senator Warner and Congressman Borland can furnish information about me personally, as can others, if desired.

Yours, very truly,

GRANT I. ROSENZWEIG.

*H. R. 16312. Interstate commerce. Transportation in contracts of news companies.*

*To the honorable Committee of the House of Representatives:*

This is neither a petition for a gift nor a grab. It is presented once for all on behalf of nearly all news companies in the country, on the theory that you would hear a proposition from one mouth rather than repetition from a dozen. We want only a hearing. After that justice will so handle us as our deserts in your good judgment may merit. We write briefly and hastily instead of talk, though we would prefer a talk, at the kind suggestion of your chairman.

We, the news companies, do not want free transportation. We expect to pay for it. We want the right to contract and pay for transportation so far as necessary for our business and to the betterment of the service for ourselves, the railroad, and the public. The news company is misunderstood. We are the people who sell newspapers, peanuts, candy, books, cigars, sandwiches, fruit, etc., on trains and in railroad stations, and operate most of the station dining and lunch rooms. We are obliged to give the public fresh merchandise, kept clean and wholesome, through employees tidy and polite, by utensils wearing out, ice boxes constantly needing cleaning, separated hundreds of miles from sources of supply, subject to countless interruptions of sickness, abandonment, etc. To efficiently serve the traveling public its needs, while in transit, is a labor of such tremendous detail and so different from operating the railroad proper that while various railroads have in the past themselves attempted to perform it, it is not unsafe to say that no railroad has without financial loss accomplished it. Hence the railroads farm out the task—they let it out to the highest bidder. The news company furnishes the materials, the men, and the service. The railroad furnishes space in stations and cars. They make a contract for division for this divided service, either on a percentage or a fixed basis, as may be agreed. The contract obligates each side to do its part, and the railroad part of the compensation is sometimes as high as \$50,000 per annum. The railroad in letting the contract deals with that news company which will do the work upon the most advantageous terms to the railroad, just as the railroad lets a contract for the building of a bridge to that contractor who will furnish the bridge at the lowest figure. We do not get transportation under such a contract in any sense gratis. We pay \$50,000 for it. To this method of doing business there never has been or can be any just objection that it is unfair, discriminating, or subversive of principle.

But the present law, whose framers doubtless gave little thought to the inconspicuous services of the news company, forbids the including of transportation in such contract in that clause of the law which forbids transportation to all but "newsboys on trains." On that account a news company can not from its warehouse at Kansas City send food, fruit, newspapers, books, or cigars to the newsboy whose train starts from Shreveport, although such transportation should be included in the contract, but such news company must pay full transportation rates for its supplies, inspectors, and substitutes to take the place of those who are sick. This added burden to the news company

threatens to result in one of two things—either to put the news company out of business or raise the prices to the traveling public.

It has been said to the writer that the same necessity for transportation which exists in the news business exists also in nearly every other business, and the coal business and milk business were mentioned. But the coal and milk lines of business serve the general public, while we serve only the traveling public; and our work is not finished by delivering coal or milk to the railroad, for we are bound to continuous service and constant alertness from minute to minute, tracing our materials into the very hands and mouths of the traveling public.

After careful study we venture to assert that no principle announced by the commerce commission is different. While the commission has held that the act which authorizes transportation for newsboys on trains excludes by inference all other transportation, no principle announced by the commission forbids the amendment of this unfortunate and too narrow language of the act. For example, transportation was forbidden to the officers of a transfer company, not because of any contract relation, but because the transfer company was not a railroad company within the meaning of the act, and hence could not claim the personal exchange of passes, as in the case of two railroad presidents. No contract relation to serve the general public appeared in that ruling. Agents for insurance, oil, watches, refrigerators, immigration, etc., may well be denied transportation without infringing on the news company, since in each case ruling upon those subjects the commission takes pains to recite that those concerns are not dealing with the traveling public for the wants of the traveling public direct, but, on the contrary, are not only exceedingly remote from the traveling public, but are further in the business of dealing with the general public as a whole rather than with the comparatively small part of the public engaged in traveling. If any of the agencies engaged in transportation could come into more direct, more immediate, and more exclusive contact with the traveling public than the news company we are unable to see it. The principles which apply to the news company as a direct and immediate servant of the public in transit ought not, by any forced construction, be derived from principles governing lines of business which do not in any manner or degree stand in similar relation.

It has also been said to the writer that such transportation is liable to abuse. Any law in the world is liable to abuse. The privilege of jury trial and the franking postal privileges extended to Members of Congress and murder laws are all liable to abuse and violation. News agents, officers, and inspectors, and commercial traveling men of wholesale houses are not likely to travel over their accustomed routes for pleasure. The transportation privileges in a news contract are guarded by additional features. All parties are liable to a penalty. If the news company should endeavor to transport improper persons or property, the railroad would lose revenue, and the news company would not only be called sharply to account, but in all contracts the railroad reserves the right to cancel the contract for violation, which would not only destroy the ability of the news company to do all business, but would render the large investments which it holds at various stations of absolutely no value. The news company therefore is watched by the law, by the railroad, and is liable to such forfeiture of freedom, money, and

property as renders abuse of transportation privilege so dangerous as to be outside of all contemplation. In short, there are more safeguards against abuse by the news company than pertains to almost any other law that occurs to our mind.

Now in what class ought the news company properly be placed? Certainly a news company is not like a milk company, shipping its milk to a great city for consumption, not merely by the traveling public, but by the entire city. The news company really performs for the railroad a function which the railroad might itself perform, if the railroad could do it so well, ministering to the traveling public in ways asked by or useful to the traveling public while in transit. For if not useful to the traveling public the traveling public would not patronize us. If a dining-car company can inspect its cars, to see that its linen is clean, food wholesome, servants polite in the dining car, why is the same right denied to the news company whose employee serves the less affluent patron in the day coaches? If the sliced orange sold in the dining car at 25 cents is transported to the dining car under a general contract between the dining-car company and the railroad, why should the same right of contract be denied to the news company which sells the same fruit in the day coach at 5 cents? But the right to include the feature of transportation is denied to the news company. If the 15-cent cigar in the dining car may be covered by contract, why not the 5-cent cigar in the common smoker or the station waiting room? What is the difference between transporting books in the Pullman for the convenience of Pullman passengers under contract between the railroad and the Pullman Company, and, on the other hand, the books in the common news butcher's basket? Why can the cake on the dining-car table be covered by contract, which is denied to the biscuit in the day coach? Why is ice cream more soothing to the adult palate than the stick of candy in another part of the train to quiet the impatience of the children? Wherein does the handsome woodwork of the Pullman delight the eye and mind of a first-class passenger more than the pictures and trinkets of the news company the eye and mind of a second-class passenger in the day coach?

Be it especially understood that the news company does not object to or exclaim against any of these features relating to the more favored companies, as in the case of a dining car, sleeping car, or express car. On the contrary, the news company thinks them right. The news company only thinks that the news company performs, in its way, the same direct and useful service to one class of the traveling public which is performed by the other companies to those parts of the traveling public which are their patrons. The news company only thinks that it has been left out by accident, oversight, and misapprehension of a line of business which the lawmakers have had little reason or opportunity to take under their fair consideration.

It has been accepted as good doctrine by the commerce commission, in its Bulletin 4 of Conference Rulings, at page 58c, and by the country generally that contracts for bridges, construction, etc., may properly include transportation "to contractors for materials, supplies, and men \* \* \* provided such arrangements \* \* \* are made part of the specifications on which the contract is based and of the contract itself." The dining car, sleeping car, eating house, and service of the news company bear the same relation to the ease, happiness, and sustenance of the operation of the railroad that good

bridges and roadbeds do to its construction. If it be logical upon principle to include necessary transportation in a building contract, why is it illogical to include it in an operating contract? If a bridge company can build a bridge and maintain it and include in its contract transportation for men, materials, and inspectors to see that, with lapse of time, the iron rods remain safe and strong, why can not a news company in a similar way include in its contract the indispensable transportation for its daily and weekly inspectors to see that its ice boxes and wares are kept sanitary for the health of the railroad patrons?

The fact that many other lines of business are asking for alleged similar rights of contract do not make those lines similar to the news company. Our differentiation is based on the indisputable fact that we are not merely collaterally, but immediately, in contact with the traveling public, directly serving its wants, both useful and indispensable, and which if not done by the news company under contract with the railroad company must, or at least could be, done by the railroad itself. And be it further remembered that we ask no further contract for transportation than is absolutely necessary for efficient service to traveling public.

We therefore ask for the news company some such provision to be inserted in the law as applies to general contractors and following the same language, viz:

Parties vending food, refreshments, and merchandise to the traveling public, on conveyances and at stations, under lease or contract with the carrier, may be furnished transportation for men and supplies, so far and only so far as reasonably necessary for the serving of the traveling public and on condition that such transportation is made a part of the specification and consideration on which the contract is based and of the contract itself.

Forbearing to extend this matter at further length at this time, but believing that the foregoing may serve as an outline, and standing ready to furnish any additional information, if the subject is not really itself apparent, the foregoing is earnestly submitted on behalf of the Brown, Van Noy, Crescent, Parker, and Union News Companies, operating on nearly all of the railroads of the country.

Very respectfully,

GRANT I. ROSENZWEIG,

*1311 Commerce Building, Kansas City, Mo.*

WASHINGTON, D. C., *March 3, 1910.*

NEWPORT NEWS CHAMBER OF COMMERCE,

• *March 1, 1910.*

HON. JAMES R. MANN, M. C.,

*Washington, D. C.*

DEAR SIR: At a meeting of the directors of the Newport News Chamber of Commerce the inclosed resolution referring to Senate bill 5106 and House bill 17536 was adopted, and the writer requested to forward a copy of same to you.

Very truly, yours,

W. E. COTTRELL, *Secretary.*

Whereas the attention of this body has been directed to bills now pending in Congress, Senate bill 5106, introduced by Senator Elkins, and House bill 17536, introduced by Mr. Townsend, proposing to amend section 15 of the act to regulate commerce as amended June 29, 1906; and



Whereas if said amendment shall be enacted into law it will give the Interstate Commerce Commission jurisdiction over American coastwise shipping in their local port-to-port traffic:

First. The steamship lines are the rate regulators of practically the entire country, serving as they do the principal port cities of the Atlantic, Gulf, and Pacific;

Second. If the private carriers, tramp steamers, and sailing vessels are allowed to make rates ad libitum, and without notice, and the regular coastwise steamship lines are forced to give statutory notice of thirty days before any change can be made, it is manifest that the regular lines can not exist, and their abandonment means the destruction of the differential rate basis, and deprives the port cities of the regular service which they have so long enjoyed, and takes from the shipping and traveling public the economy of water transportation: Therefore be it

*Resolved*, That this body desires to be recorded as opposed to any legislation which will restrict the merchant marine or deprive this port of the advantages which accrue to it from the regular coastwise steamship service.

*Resolved further*, That a copy of this resolution be sent to Senator Elkins, chairman of the Senate Committee on Interstate and Foreign Commerce; to the Hon. James R. Mann, chairman of the House Committee on Interstate and Foreign Commerce; and to the Senators and Members of Congress from this State, with the request that they will do all possible to prevent the enactment into law of the bill, which can only result in injury to a great mass of the shipping public of this country and an injustice to those who have invested large capital in American shipping.

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*Recommendations to the National Congress adopted by the Trans-Mississippi Commercial Congress, Denver, Colo., August 16-21, 1909.*

*To Hon. William H. Taft, President of the United States; Hon. James S. Sherman, Vice-President of the United States; Hon. Joseph G. Cannon, Speaker House of Representatives; and the Members of the National Congress:*

SIRS: At the twentieth annual session of the Trans-Mississippi Commercial Congress, held in Denver, August 16-21, 1909, all the States and Territories west of the Mississippi River being represented, including representatives from Alaska, Hawaii, and the Philippine Islands, numbering in all 2,106 delegates, the following recommendations to the National Congress were adopted:

\* \* \* \* \*

#### INTERSTATE COMMERCE.

##### CONTROL OF RATES AND CHARGES.

*Resolved*, That we indorse and encourage the uniting of the shipping interests of the West and Southwest in the efforts to secure reasonable freight rates to and from Gulf ports, and that we urgently request the Congress of the United States to pass an act at its next session placing under the jurisdiction of the Interstate Commerce Commission the control of rates and charges for the transportation of freight and passengers on steamships engaged in the United States coastwise trade, so as to prevent combinations which will hinder a free movement of traffic through natural channels; and

##### REASONABLE THROUGH RATES.

That we favor the securing of reasonable through rates between the Atlantic seaboard and trans-Mississippi territory, based upon fair rates to and from Gulf ports, and call upon the representatives in Congress from the trans-Mississippi region to aid in enacting such legislation as will speedily result in the accomplishment of these ends.

##### ADVANCE IN RATES.

That the Congress of the United States be, and the same is hereby, memorialized to enact a law which shall prohibit any railroad company from advancing interstate rates, fares, and charges, except upon approval of the Interstate Commerce Commission after notice thereof to interested parties in such cases as the commission shall deem necessary; and,

That all parties having the right to complain of any proposed advance in rates, whereupon it shall be the duty of the Interstate Commerce Commission to suspend the taking effect of such proposed advances until an opportunity shall be afforded the interested party to be heard; and,

That the Interstate Commerce Commission shall be authorized to suspend in all cases any changes in the tariffs covering rates, fares, and charges, or rules and regulations respecting the same, pending any investigation which the commission deem necessary to determine whether the same are just and reasonable.

INSUFFICIENT SERVICE.

That we indorse the bill pending in the Congress of the United States known as the "Culberson-Smith car and transportation service bill," and believe the enactment of said bill will remedy the evils resulting from insufficient service in transportation of live stock, and we hereby recommend its passage.

THE SHORT AND THE LONG HAUL.

That we urge upon all Senators and Representatives to the National Congress at Washington representing trans-Mississippi territory their full support to secure the passage of a law at the next session of Congress to the end that transportation companies shall be prohibited from charging a greater rate for transporting freight, passengers, or express for shorter than for longer distances over the same route in the same direction, the charge for the shorter distance to be wholly included in the charge for the longer distance.

COMPULSORY QUOTATION OF RATES.

That we recommend that the Congress of the United States enact an amendment to the act to regulate commerce requiring railroads to quote freight rates in writing when so requested by any shipper, and that rates so quoted be protected to avoid loss to shippers, and assessing a reasonable penalty against the carrier making the misquotation, so that the provision of the act against rebating may be kept inviolate.

COMBINATIONS IN RESTRAINT OF TRADE.

*Resolved*, That we approve of the State and National Governments to punish and suppress combinations in restraint of trade and competition.

MADISON, June 7, 1909.

HON. JOSEPH G. CANNON,  
*Washington, D. C.*

DEAR SIR: In compliance with a request of the legislature, I have the honor to transmit herewith copy of joint resolution No. 49A, memorializing Congress to enact a law providing for physical valuation of railroads.

Very truly, yours,  
J. A. FREAR, *Secretary of State.*  
Per KARRAS.

[Joint resolution No. 49A.]

JOINT RESOLUTION Memorializing Congress to enact a law providing for physical valuation of railroads.

*Resolved by the assembly, the senate concurring*, That the Congress of the United States be requested to enact a law providing for the physical valuation of all railroad property to form the basis for fixing the rates and charges for service by railroads.

*Resolved*, That the secretary of state is hereby directed to forward a copy of this resolution to the President of the United States and to each Member of the Congress thereof.

L. H. BANCROFT,  
*Speaker of the Assembly.*  
JOHN STRANGE,  
*President of the Senate.*

C. E. SHAFFER,  
*Chief Clerk of the Assembly.*  
F. E. ANDREWS,  
*Chief Clerk of the Senate.*

## SPOKANE CHAMBER OF COMMERCE,

*Spokane, May 25, 1909.*

Hon. JOSEPH G. CANNON,  
*Speaker House of Representatives,*  
*Washington, D. C.*

DEAR SIR: I have the honor to submit herewith an expression of this association as embodied in the inclosed resolutions, and would respectfully request your early consideration of same.

This association is composed of 750 members, representing every phase of the commercial life of Spokane, and the resolutions have the unanimous approval of the members.

Yours, very truly,

L. G. MONROE, *Secretary.*

MAY 18, 1909.

Whereas mutual confidence and stable business conditions are necessary as between shippers and the common carriers to the future welfare of the nation: Therefore be it

*Resolved by the Spokane Chamber of Commerce and the Spokane Merchants' Association,* That we most earnestly indorse and recommend to Congress the passage of amendments to the interstate commerce act, which shall give to the Interstate Commerce Commission, in its discretion, power to suspend the taking effect of proposed advances in existing rates, or rules affecting rates, upon a prima facie case being made showing the unreasonableness of such proposed advances in rates or changes in rules pending a hearing; which shall give to the shipper the right to route his freight where through routes and through rates are provided for in joint through tariffs, should he desire to avail himself thereof; and which shall require carriers to quote rates in writing upon application, and upon request to insert rates in bills of lading.

Respectfully submitted.

SPOKANE CHAMBER OF COMMERCE,  
 By D. T. HAM, *President.*

Attest:

L. G. MONROE, *Secretary.*

SPOKANE MERCHANTS' ASSOCIATION,  
 By A. M. V. CUMER, *President.*

Attest:

J. B. CAMPBELL, *Secretary.*

Unanimously adopted by both associations this the 18th day of May, 1909.

### *National Board of Trade, organized 1868.*

[Extract from the records of the fortieth annual meeting of the National Board of Trade, held in Washington, D. C., January 25, 26, 27, 1910.]

#### FEDERAL ANTITRUST LAW.

Whereas the present federal antitrust law (act July 2, 1890) was not intended to apply to common carriers engaged in interstate commerce, nor to ocean transportation; and

Whereas the construction placed upon the said law by the courts has sustained the most radical views as to the intent of said law, and in anticipation of the ultimate confirmation of such construction of the law the gravest fears as to the effect of same upon the business interests of the country are aroused in conservative quarters, and serious proposals are being made for the amendment of the law by the introduction therein of some expression limiting its operation to prevent contracts and combinations in restraint of trade, which, when sound principles of public policy are applied, can not bear the test of reasonableness; and

Whereas the main purposes and intent of the law was unquestionably to prevent contracts and combinations injurious to the

public and to conserve the best interests of all the people, and was not intended to check progress or limit industrial development and activity or the extension of railroads and other instruments of commerce: Therefore be it

*Resolved*, That while the fundamental principle and purpose of the law should be preserved so that it will effectively prevent contracts and combinations injurious to the people's interests, it should be so amended and modified that its operations will extend only to prevent and destroy contracts and combinations which are thus injurious; And be it further

*Resolved*, That said law should be so amended that it shall be permitted to common carriers engaged in interstate commerce to make agreements for the maintaining of reasonable rates and practices, and that ocean carriers may be permitted to make proper traffic agreements, provided that such agreements shall be subject to the approval of the Interstate Commerce Commission, after notice to the public, and hearing thereon.

True copy:

FRANK D. LATUME, *President*.

Attest:

J. P. TUCKER, *Secretary*.

Whereas expressions of opinion of various organizations interested in commerce affairs have been solicited by Members of Congress in relation to the proposed amendments to the act to regulate commerce, as set forth in House bill 17536, dated January 10, 1910, commonly called the "Townsend bill;" and

Whereas the Chicago Bar Association has been asked to express its views with reference to the proposed amendments to the act to regulate commerce: Now, therefore, be it

*Resolved by the Chicago Bar Association, by and through its board of managers*, That in the judgment and opinion of said association the proposed amendments to the act to regulate commerce should include a provision permitting either party to a proceeding before the Interstate Commerce Commission to appeal to the proposed court of commerce and from it to the Supreme Court of the United States, and further permitting any complainant in a matter pending before the Interstate Commerce Commission to appear and be heard either in person or by attorney in any proceeding pending in the proposed court of commerce or in the Supreme Court of the United States in which is involved the enforcement or nonenforcement of the order of the Interstate Commerce Commission entered in the cause in which said complainant is a party.

*Further resolved*, That the Secretary of the Chicago Bar Association be authorized and directed to send a copy of these resolutions to the two Senators of the United States from the State of Illinois and to the Members of the Congress of the United States living in the city of Chicago.

I hereby certify the above and foregoing to be a true and correct copy of a resolution adopted by the board of managers of the Chicago Bar Association at a meeting held on Monday, January 31, 1910.

FARLIN H. BALL,  
*Secretary of the Chicago Bar Association.*

Dated February 2, 1910.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,  
*San Francisco, December 16, 1909.*

HON. JULIUS KAHN,  
*Member House of Representatives,*  
*Washington, D. C.*

DEAR SIR: This commission is in receipt of a letter from the railroad commission of Tennessee asking that we urge an amendment to the interstate commerce laws which will permit of the transportation companies issuing free interstate transportation to the members of the state railroad commissions and their employees while on official business.

We feel that it would be of great benefit to the public if members of the different state railroad commissions throughout the Union would meet as often as possible and exchange views and ideas with reference to their work; in this way the work of the different commissions would become more uniform. The National Association of Railway Commissioners now meet once each year at some point in the Union and from which good results are obtained, but the meetings are not as generally attended as they should be owing to the great expense, some of the commissioners having to personally pay their expenses; in a great many of the States the appropriation for contingent expenses is very small and insufficient.

We would therefore respectfully ask that you give this matter some attention and, if possible, have such an amendment passed. We would be pleased to furnish you with any further information in the matter that you may desire.

Respectfully yours,  
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,  
By W. D. WAGNER,  
*Secretary.*

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GOULDER, HOLDING & MASTEN,  
*Cleveland, Ohio, February 21, 1910.*

HON. JAMES R. MANN,  
*House of Representatives,*  
*Washington, D. C.*

DEAR SIR: From such investigation as I have been able to make, and from report, I conclude there is no present purpose to deal with transportation by water generally, or to change the status of water carriers. In this bill (H. R. 17536, now 21232), however, the proviso of section 15 of the present law, limiting the authority of the commission as to compelling through routes and rates to cases where "no reasonable or satisfactory through route exists," is eliminated, and authority would be given, if enacted in this form, to compel through routes and rates by rail and water regardless of the number of satisfactory routes existing.

As the water carriers generally are not asking for this at this time, and there does not appear any public demand for it, would it not be well to restore the proviso as to water carriers, leaving them as they are until the relation of the rail-owned water line is more clearly defined?

There is, however, this consideration: It is evidently the desire of the commission that in their regulation of the railroad rates and routes

they should have some control as to the making of a through route and a through rate by rail and connecting water line, so that the public may get the proper advantage in through routes and through rates of the water and rail accommodations. This does not seem unreasonable if confined within proper limits, but in dealing with the water part of the transportation there are so many elements to be considered that, without the fullest investigation of conditions, general legislation is dangerous and likely to break down the advantages by dissipating them.

Mr. Daniel H. Hayne, of Baltimore, well schooled in the situation and qualified, I understand, has suggested an amendment or amendments, accompanied by full brief, as follows:

■After the word "character," page 19, line 10, of S. 5106, and page 18, line 23, of H. R. 17536, insert: "And provided, that this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists; but this shall not exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carriers' water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water."

This makes pronounced this feature: That where there is no reasonable or satisfactory through route by rail and water, the commission shall have authority to make such. I am not sure but that this amendment would aid in the ultimate solution of the relation between rail and water transportation; it would at least make certain that the advantages of water and rail transportation are held in mind. If the rail carriers are to be prohibited from engaging in transportation by water with the freedom which an independent line should enjoy; that is, one not owned or controlled by a railroad company as contrasted with one so owned, then by reposing in the commission authority to establish one "satisfactory" rail and water route, the public would get this advantage and it would not be open to a railroad company to establish its own water line, and so hamper the independence of other water lines and deny to the public the natural advantage.

While I would prefer that the question of the relation of rail and water transportation should be dealt with when attention is not so greatly diverted to other matters as in the present bill, it seems to me that the amendment proposed by Mr. Hayne and which is being largely and will be more largely circulated, would accomplish a real good.

The fact is that the independent water lines are now so much controlled in their through business by the dictation of rail lines that it is dangerous for independent water lines to touch the matter until the attitude of the people and of Congress has been definitely declared on the rail owned water line question, which is now somewhat in the air. There is then open the public question as to what facilities the land carriers may be compelled to give to independently owned water carriers so as to preserve the natural benefits of water transportation to the people and to preserve also the rate-regulating influence of the water lines. In any event, if it shall be concluded wise not to deal with this proposition at this time, and it would seem to me most unwise when attention is diverted and there are other public purposes in view, Congress should at least make it definite that the present intent is not to interfere with the laws applicable to trans-

portation by water, and definite language might and should be inserted to show this purpose; the matter not to be left to the uncertainty of construction by the commission.

If the above amendment can not be made at this time, I suggest that the following be inserted after any provision as to water transportation:

And this act shall not be construed so as to in anywise affect such water carriers' water traffic, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

The advisability, if not necessity, for such amendment will be apparent if you will examine section 3 of the act of February 13, 1893, commonly known as the "Harter Act," section 4282, 4283, Revised Statutes, and section 18 of the act of June 26, 1884.

I do not go into the matter in detail because you are familiar with it, and I believe that the interests of the water lines are safe in the hands of your committee when attention is called, for they will have it in mind that the conditions are essentially different, and that the main purpose of the legislation is to control rail abuses and to preserve to the people the advantages of the water transportation; also to repose somewhere sufficient authority to prevent that water transportation from being under the absolute dictation of the railroads. The question is a public one, fraught with much good and potential for evil. It may be taken as a basic principle that water carriers are a natural defense and corrective against matters calling for regulation of land carriers from the very nature of their situation and relation and are in no sense open to the same abuses.

If this amendment is not proposed by others, will you offer it?

Very truly, yours,

HARVEY D. GOULDER.

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HOUSE OF REPRESENTATIVES,  
Washington, March 4, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. MANN: I beg to inclose herewith a letter from my friend and constituent, Thomas A. H. Hay, of Easton, Pa., who has had large experience in the building and operation of electric railways. I would be very glad if you would give his suggestions some consideration in the preparation of the pending bill.

With kind regards, I am,

Yours, truly,

A. MITCHELL PALMER.

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NORTHAMPTON TRACTION COMPANY,  
Easton, Pa., February 22, 1910.

HON. A. MITCHELL PALMER, M. C.,

*Stroudsburg, Pa.*

MY DEAR MR. PALMER: I am very much obliged to you for your letter of the 10th instant, in reference to the bill prepared by the Attorney-General, known as the railroad-rate bill. We street-railway

men have been at a disadvantage so long that the Government now should not give the steam roads a club to injure us.

May I suggest an additional clause to go into the bill, that street railways having terminals in towns and cities and doing an interstate business should be compelled to permit the use of their terminals to noncompeting lines just the same as steam roads are compelled to permit the cars of their competitors the right to use their tracks.

The Easton Transit Company, which owns all the entrances into Easton and Philipsburg, will not permit the use of their tracks by the Northampton Traction Company, the Easton and Washington Traction Company, and the Philadelphia and Easton Railway Company, all of which are interurban and noncompeting lines, in order to bring the passengers into the center of Easton.

The Easton Transit Company has the right to use these terminals by reason of taxation locally and the aegis of the interstate-commerce laws, and yet that same law can not compel them to permit other trolley companies, noncompetitive, to use their terminals except at whatever price they set, which price is very prohibitive and proscriptive.

You are so familiar with our situation here that I want to draw this to your attention, and you, like the keen lawyer you are, can readily see the force and strength of my suggestion.

Very sincerely, yours,

THOMAS A. H. HAY.

*Interstate commerce act, proposed amendment to relieve coastwise water carriers from operation of act.*

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

At a meeting of the commerce and transportation committee of the Philadelphia Maritime Exchange, acting under authority of the board of directors, held the 2d day of March, 1910, the following preamble and resolution was adopted:

Whereas certain amendments have been suggested to Senate bill 5106 and House bill 17536 which affect the interests of coastwise water carriers, and as it is meet and proper that the Philadelphia Maritime Exchange, having considered these amendments, should place on record its conclusions with respect thereto: Be, and it is hereby,

*Resolved*, That the Philadelphia Maritime Exchange, having considered the proposed amendments to section 9 of Senate bill 5106 and House bill 17536, is of the opinion that the bills should be so drawn as clearly to exempt traffic shipped from port to port by coastwise water carriers.

THE PHILADELPHIA MARITIME EXCHANGE,  
By J. S. W. HOLTON, *President*.

Attest:

C. R. HARWOOD,  
*Secretary*.

PHILADELPHIA, *March 2, 1910.*











# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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PART XXV

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman.*

IRVING P. WANGER, PENNSYLVANIA.  
FREDERICK C. STEVENS, MINNESOTA.  
JOHN J. ESCH, WISCONSIN.  
CHARLES E. TOWNSEND, MICHIGAN.  
JAMES KENNEDY, OHIO.  
JOSEPH R. KNOWLAND, CALIFORNIA.  
WILLIAM P. HUBBARD, WEST VIRGINIA.  
JAMES M. MILLER, KANSAS.  
WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.  
CHARLES G. WASHBURN, MASSACHUSETTS.  
WILLIAM C. ADAMSON, GEORGIA.  
WILLIAM RICHARDSON, ALABAMA.  
CHARLES L. BARTLETT, GEORGIA.  
GORDON RUSSELL, TEXAS.  
THÉTUS W. SIMS, TENNESSEE.  
ANDREW J. PETERS, MASSACHUSETTS.

## BILLS AFFECTING INTERSTATE COMMERCE.

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The CHAIRMAN. Without objection, certain papers that have been used by the committee will be printed as a hearing.

INTERSTATE COMMERCE COMMISSION,  
March 12, 1910.

Hon. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

SIR: The Interstate Commerce Commission desires to urge upon you the importance of an amendment to the act to regulate commerce which will provide a suitable penalty for neglect or refusal on part of a carrier, receiver, or trustee to comply with regulations or orders of the commission promulgated or issued under the provisions of section 6 of the act.

The importance of this matter is so apparent that extended discussion of it seems unnecessary. The experience of the commission has been that in a general way the carriers have treated its tariff regulations and orders connected therewith, issued under the power vested in the commission by section 6 of the act, in a reasonable and satisfactory manner, and that the responses thereto have been reasonably prompt. There have, however, at all times been some who were dilatory and unwilling, and who apparently have been disposed to presume upon the fact that the act provides no penalty for neglect or failure to comply with such orders or regulations. Out of these experiences there has grown a conviction on our part that such penalty is essential to the effective enforcement of this important feature of the law, and this conviction is strengthened and crystallized by experiences of very recent date.

Such an amendment will strengthen the position of the commission, will be a material help to such traffic officers of carriers as are disposed to conform to the law and respond promptly to its requirements, and will insure continued progress in this work. The continued absence of such a penalty will, we fear, tend to retard the work. We therefore recommend that section 6 of the act be amended by inserting therein or adding thereto the following:

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

The commission is not tenacious as to the amount of the main forfeiture or of the continuing forfeiture, although each should be of a sufficient amount to effect the desired end.

This request has also been addressed to the Committee on Interstate Commerce of the United States Senate.

Bespeaking your considerate attention to this matter, I am, for the commission,

Yours, very truly,

MARTIN A. KNAPP,  
*Chairman.*

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WASHINGTON, D. C., *March 12, 1910.*

HON. JAMES R. MANN,

*Chairman Committee on Interstate and  
Foreign Commerce, House of Representatives.*

SIR: We feel that the interests which we represent will be limited in their rights if the proposed amendments to the act to regulate commerce shall not affirmatively grant the right of the parties at interest in proceedings before the Interstate Commerce Commission to be represented by their own counsel should they wish to do so in defense of suits which may be brought to set aside, annul, or suspend such orders made in their interest.

Speaking from a practical knowledge of the subject, we wish to impress it on the members of the committee having the bills in charge that in important cases the questions involved may generally be questions of fact as to how much the shippers must pay, and that involves questions pertaining to railroad finances, earnings, operating expenses, costs of service, rates, comparative rates, and every matter which the court should consider in determining the suit which railroads may bring wherein the validity of the commission's order is involved, the evidence making up large records of detail requiring much time and labor to properly analyze.

Exactly to the same extent in money that railroads are interested in such cases the shippers are interested. To not grant the affirmative right that the complainants before the commission are entitled to be represented by their own counsel familiar with the subject-matter would be a denial of even-handed justice. We conceive that if the bills now before the House and Senate should be enacted into law the theory that the Attorney-General shall control such litigation would be a part of the enactment. Assuming that such legislation is to be enacted, we insist that shippers be granted the affirmative right, as expressed in the following proposed amendment to the bill to be inserted at the appropriate place therein, viz:

*Provided, That parties at interest to proceedings before the commission in which an order or requirement is made may appear and be represented by their counsel upon such terms as the court may prescribe in any suit wherein is involved the validity of such order or requirement of any part thereof and the interest of such party; but such appearance and representation shall not interfere with the control of the case by the Attorney-General, and the court wherein is pending such suit may make all such rules and orders as to such appearances and representation, the number of counsel, and all matters of procedure and otherwise as to subserve the ends of justice and speed the determination of such suits.*

Doubtless many cases will arise in which shippers would not care to be represented but would prefer to leave the matter in the hands of the Department of Justice, but in important cases like that now being argued before the Interstate Commerce Commission, involving the question as to whether advances made in the rates to and from Texas common points is reasonable, and which materially affects



manufacturers and merchants at St. Louis, Chicago, Cincinnati, Cleveland, and intermediate points, as well as at points on the Missouri River, the organization of shippers would feel that they are denied substantial justice unless the law provides that they have a right to be represented in any court where would be called in question such order as the commission may make respecting such rates.

Innumerable cases will come before the commission where special qualifications by previous examination of the facts will be essential to a proper defense of such cases. It is no criticism on the Attorney-General or his assistants to say that it will be impossible in a great many of such cases for the Assistant Attorney-General to become acquainted with the facts within the time allowable. It is true that under the proposed bill he may employ as special counsel those who may understand the detail of the facts and be able to present the same for the shippers equally as well as attorneys for the railroads, but the Attorney-General is not obliged to do so, and while that would apparently be the duty of the Attorney-General, there is no doubt that shippers generally would prefer to be represented by their own counsel in the courts where the question involved is whether the order of the commission is valid, should such counsel not be employed by the Attorney-General.

We submit, therefore, in behalf of the interests we represent, the foregoing amendment as a request in the interests of public justice.

Very respectfully,

J. C. LINCOLN,  
*President of Industrial Traffic League.*

H. C. BARLOW,  
*Traffic Manager Chicago Association of Commerce.*

S. H. COWAN,  
*Attorney for American National Live Stock Association  
and Cattle Raisers' Association of Texas.*

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NEW YORK, March 4, 1910.

HON. JAMES R. MANN,  
*Chairman Committee on Interstate  
and Foreign Commerce, Washington, D. C.*

DEAR SIR: We have looked over the hearings you sent us on H. R. 17536 and H. R. 21232 and regret that we did not know of these hearings in time to appear before the committee, as we are thoroughly in accord with that section of the bill which gives to the Interstate Commerce Commission the power to make through joint rates when one of the connecting lines is a water line.

We should like to refute some of the statements made by Mr. Duff, Mr. Raymond, and others objecting to this clause. For example, they all claim it is necessary for their steamers to secure port-to-port business, in order to get sufficient cargo to proceed in safety. All modern first-class steamers have double bottoms, in which they carry water ballast, and thousands of steamers are proceeding from port to port, all over the world without carrying a pound of freight. Our own steamers repeatedly go south when freights are not available with nothing in but their water ballast. Further, Mr. Duff avoids

any hint of the real nature of the association which he represents. All the companies in the American Steamship Association run regular lines and either prorate with railroads themselves or are a part of a larger company that has strong railroad affiliations. The association has no hesitancy in stating their membership is limited to regular lines and their attitude on every bill that has come before Congress has been to endeavor to kill anything that puts the independent steamer or vessel owner on the same basis as themselves. As the law stands to-day, the members of the American Steamship Association can make sufficient profit on their interior business to lower rates on their port-to-port business so as to kill any competition. Gradually they are adding more and more commodities to their prorating arrangements, and if the railroads extend this prorating scheme far enough, it would practically cover all the coastwise business, as there is little or no freight that on one end or the other end is not handled by a railroad.

To the statements that the so-called tramp vessels are old and inefficient, we take a decided exception. The Newport News Ship Building Company completed for us last August as fine a freight boat as there is of her size on this coast, 4,800 tons dead weight. They are now building a duplicate of this steamer for us, and we are also building one at the Maryland Steel Company. The confidence we had that Congress would see that independent carriers were accorded a fair chance to compete on all business largely induced us to go into these new boats. We do not believe that fair, open competition would drive any line out of business, unless their capitalization and running expenses were so high that they could not compete with a better managed and better organized company.

All we are interested in is a fair field with no favors to any of us, and from every statement that the organized lines have made before your committee, they clearly show that this is not to their liking.

Yours, respectfully,

A. H. BULL Co.

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CHICAGO, *March 7, 1910.*

DEAR SIR: Won't you please have the administration bill amended in accordance with the inclosed suggestion which has been indorsed by our association. Fining the railroad \$250 does not help the shipper who has paid more money into the coffers of the railroad than than the published rate calls for.

Your kindness in this matter will be very much appreciated.

Very truly, yours,

JOHN M. GLENN.

HON. JAMES R. MANN,  
*House of Representatives,*  
*Washington, D. C.*

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The published tariffs shall be as binding upon the railroads and upon all those who do not hold a bona fide quotation in writing, signed by an authorized agent of the railroad, as a law enacted by Congress.

All bona fide quotations on freight rates made in writing by an authorized agent shall be binding upon the railroad he represents.

In the event of an error in quoting, the legal rate shall be billed and collected. A claim will then lie for the difference between the amount paid and the amount quoted, but such claim shall be made only through the Interstate Commerce Commission.

If it shall appear that the quotation was made and accepted in good faith, the claim shall be allowed and a rebate be authorized to be paid to the claimant.

A record of all such claims shall be maintained by the Interstate Commerce Commission, in order that intentional errors in quotations may be easily discovered.

The railroad making the error shall be fined the difference between the legal rate and the rate quoted.

If it shall appear that the quotation was made or accepted with intent to evade the provisions of the law, it shall be referred to a court of justice for its decision.

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PEORIA, ILL., March 9, 1910.

Hon. JAMES R. MANN,

*House of Representatives, Washington, D. C.:*

This company respectfully urges favorable action regarding amendment Elkins-Townsend bill suggested by Illinois Manufacturers' Association concerning freight-rate quotations.

E. G. SCHAEFFER,

*Traffic Manager Keystone Steel and Wire Co.*

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CHICAGO, March 10.

Hon. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
Washington, D. C.:*

We desire to urge your favorable consideration of Illinois Manufacturers' Association amendment to Elkins-Townsend bill relative misquoting rates. We consider original bill affords no adequate protection and something like amendment imperatively required. We have suffered considerable loss through errors of railroad agents against which we could not guard. Believe it only right that proper protection should be accorded hereafter.

ROSENBAUM BROS.,

*Grain Merchants.*

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PEORIA, ILL., March 9, 1910.

JAMES R. MANN,

*Chairman House Committee on Interstate Commerce,  
Washington, D. C.:*

We ask your support of amendment to the Elkins-Townsend bill indorsed by the Illinois Manufacturers' Association.

PEORIA SHIPPERS' ASSOCIATION,  
O. S. BECKER, Secretary.

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JOLIET, ILL., March 9.

Hon. JAMES R. MANN,

*Washington, D. C.:*

We urge the amendment to Elkins-Townsend bill that will allow us to collect of railroad if they quote us the wrong rate in error. We have been sufferers without redress.

CARRIER LOW CO.

THE LAKE SHORE ELECTRIC RAILWAY COMPANY,  
Sandusky, Ohio, March 30, 1910.

MR. JAS. R. MANN,  
*Chairman Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D. C.*

DEAR SIR: The bill before Congress authorizing a court of commerce and amending Interstate Commerce Commission law, prohibits the commission from ordering through routes and tickets, etc., as between steam railroads and interurban railroads.

It would seem to me that this bill should be amended so that the commission would have the authority to order such through routes when, in their judgment, it seemed proper. Steam railroads, in this State at least, have taken the position that they will not do business with any interurban roads. For what reason, I do not know. This, however, is a burden to a great many people.

It is my belief that the public are entitled to all the benefits of transportation which can be secured, and if this bill becomes a law in the form it is at the present time it simply means that because this company, for instance, is not in the freight business the commission would have no authority. We have a great many points on our road where there is a large interchange of traffic between this company and steam railroads which we cross. For instance at Monroeville we cross the Baltimore and Ohio railroad, they stopping their trains in front of our station instead of their own. Any passenger, however, desiring to use both roads must buy two tickets and have their baggage checked twice on account of this agreement between steam railroads.

The Lake Shore Electric comprises about 215 miles and for the year ending June 30, 1908, carried approximately 6,000,000 passengers. The Wheeling and Lake Erie, which comprises about 500 miles (almost entirely within the State of Ohio), handled during the same period, approximately, 1,090,000 passengers. All of these 1,090,000 passengers had the opportunity of buying through tickets, having their baggage checked through to point of destination, while on our system of less than one-half the mileage and handling six times as many, passengers were not accorded this privilege.

It is a remedy to cover this discrimination which I seek. I trust you will appreciate the situation and will lend your influence to have the bill amended so that the commission may, in its judgment, order through rates and routes between steam and interurban railroads.

Yours, truly,

F. W. COEN,  
*Vice-President and General Manager.*

[Pacific Mail Steamship Company, Portland and Asiatic Steamship Company, San Francisco and Portland Steamship Company, Flood Building, San Francisco, Cal.]

WASHINGTON, D. C., March 10, 1910.

HON. WM. H. TAFT,  
*President of the United States,  
Washington, D. C.*

SIR: In conformity with your request at the close of our conversation on March 8, I respectfully submit the following:

1. That the manufacturing centers of the United States, via the Pacific coast gateways, were closer by twenty to thirty days to the

consuming centers of the Orient than by either the all-water route from New York City or by the all-water route from the manufacturing centers of Europe through the Suez Canal to the Orient.

2. It is of the highest importance for the success of our industrial manufacturing plants in the world's competition to excel in time of delivery to consuming centers.

3. That up to the time the Interstate Commerce Commission ruled that American transcontinental railroads should publish and file their proportional rates on import and export business an enormous tonnage had been built up and moved from the manufacturing centers in what is called Mississippi, Trunk Line, and Atlantic coast territory to the Orient via the Pacific coast gateways.

4. That the tonnage was moved on competitive rates, of which the railroads and steamship companies each received a certain proportion, and these rates were competitive against the New York-Suez all-water route or the German-United Kingdom all-water route, and therefore, the railroads were compelled to accept a lesser earning as their proportion than they received on domestic freight.

5. That the movement of this enormous tonnage via the Pacific coast gateways stopped immediately after the ruling of the Interstate Commerce Commission requiring the transcontinental railroads to publish their proportional rates, for the reason that the railroads declined to publish those rates and withdrew their proportional export and import rates in effect with the trans-Pacific carriers. The domestic rates are not competitive on export and import business, and used in connection with any trans-Pacific service makes the rates through the Pacific coast gateways prohibitive, in consequence of which all the tonnage now moves through the Suez and from European ports, and solely in foreign bottoms.

6. That the previous freight rates and service were satisfactory was evidenced by the large movement of tonnage, and the earnings on this movement accrued largely to American transcontinental railroads and American steamship lines on the Pacific, whereas at present these freight earnings accrue entirely to foreign bottoms; and not only this, but the industrial centers of Europe have been placed closer to the consuming centers of the Orient than when this tonnage moved through Pacific coast gateways. It is respectfully submitted to you that this is not fair or right or proper, and that the law can be reasonably amended so that American industry can participate in the earnings on the movement of this tonnage as well as the fact that the American plants should be maintained in closer proximity to the consuming centers of the Orient than those of any other nation in the world.

It is therefore respectfully suggested that section 8 of the bill H. R. 21232, as found at pages 15 and 16 of the bill, be amended after the word post office, line 15, page 16, as follows:

And said section 6 is hereby further amended by adding thereto, at the end thereof, the following: "In the publication of rates, fares, and charges, by common carriers subject to the provisions of this act, applying to the transportation of passengers or property from any place in the United States to a foreign country, or from a foreign country to any place in the United States, such common carrier may publish the total rate, fare, or charge as a unit from origin to destination, and such publication shall be deemed a sufficient compliance with the requirements of this act in respect to publication, so far as the transportation above mentioned is concerned."

Thanking you for the time and consideration you gave me at the interview, I am,

Very respectfully, your obedient servant,

R. P. SCHWERIN, *Vice Pres. and Gen. Mgr.*

[Pacific Mail Steamship Company, Portland and Asiatic Steamship Company, San Francisco and Portland Steamship Company, San Francisco.]

120 BROADWAY,  
*New York, March 28, 1910.*

THE PRESIDENT OF THE UNITED STATES,  
*Washington, D. C.*

SIR: I beg to acknowledge receipt of your letter of March 11 and to thank you for the transmittal of the subject, as brought to your attention, to Senator Elkins, Representative Mann, and the Interstate Commerce Commission.

The inclosed clipping from the New York Sun of Saturday, March 26, brings the subject very closely home to me, and I have taken the liberty to again call your attention to this most important and vital situation in regard to American industry on the Pacific.

It must be borne in mind that the ocean carrier is not a mere conveyer of freight, but it is a most important and able ally of the manufacturing industries of the country of its own flag. In proof of this, I can cite a case:

In the early nineties this country did not ship a pound of nails to Japan. I persuaded Mr. Schuyler, who at that time was president of a large wire and nail factory at Cleveland, to study the nail market of Japan, which was then being supplied entirely by Germany and amounted to thousands of tons a year. Mr. Schuyler did so and reported to me that it would be impossible to enter that territory, for the reason that he could not make it a dumping ground for the excess of production of nails in this country. The Japanese required that nails be put up in picul kegs of 133 pounds instead of the standard 100-pound keg of America, and also the Germans had been shrewd enough to educate the Japanese to use a peculiar wire drawn nail which would require special rolls to make. I urged Mr. Schuyler to go after this business and told him we would pioneer for him; after strenuous solicitation, he became interested, made a study of what it would cost him to go into that market, and finally told me that the rate he would require from Cleveland to Kobe would be so low he would be ashamed to ask for it. I told him we would make any rate from Cleveland to Japan he would require to establish the business, and he finally told me that he would put in the rolls, make the picul kegs, and go into that market to please me, provided I could give him a rate of \$6 per 2,000 pounds Cleveland to Kobe. At first we practically carried the nails for nothing on the steamer, giving the bulk of the \$6 rate to the railroads.

The movement at first was small, but rapidly grew, under the selling enterprise of Americans assisted by us, to amazing proportions, and inside of two years we had the entire nail trade of Japan, amounting to thousands of tons per year. Later Mr. Schuyler, of his own volition, raised the rate he was paying from \$6 to \$10 per 2,000 pounds.

To-day I do not believe there are any nails shipped to Japan from this country; if so, the amount is so small as to be insignificant. Norway has obtained control of the business.

Steamship lines having space will hunt for business and engage and interest manufacturers and exporters, where without the steamship interest the trade will languish.

The situation with us is extremely serious, and while it is alleged that the Pacific Mail Steamship Company is controlled by the Southern Pacific Company, it must be borne in mind there are over 1,000 stockholders of the Pacific Mail Steamship Company and the laws will not permit the Southern Pacific Company to pay out of its treasury the losses sustained by the Pacific Mail Steamship Company, and therefore it must inevitably pass into the hands of a receiver and bankruptcy unless it can get business for its vessels.

We previously carried freight from all parts of the United States, and the railroads received on the business they originated in this country for their proportion of the haul two-thirds and the steamship company one-third of whatever the rate might be. On homeward cargo the steamship company received three-eighths and the railroads five-eighths on whatever the rate might be, the initial carrier making the rate to get the business. I have tried my best, without success, to persuade the railroads of America to publish their proportional rate on all export and import business. A glance at the map will show that the Southern Pacific Company forms but a small proportion of the mileage of the United States over which the tonnage to and from the Orient moves, and therefore they are but a small feature in the number of roads that must publish their proportional rates, so that my work has been among all railroads, and I have failed.

I have therefore again taken the liberty of calling this matter to your attention, earnestly hoping that you may feel disposed to use the influence of your great office with the gentlemen that have the interstate commerce bill under consideration in Congress to bring some relief to the situation, and in doing so you are helping American enterprise both on land and sea, the latter of which is seriously handicapped by competition with foreign subsidized lines and still further handicapped by the administration of the laws of its own countrymen. This latter handicap can be changed by the will of Congress.

I am, sir,

Very respectfully, your obedient servant,

R. P. SCHWERIN,  
*Vice-President and General Manager.*

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BALTIMORE, MD., *March 16, 1910.*

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: Mr. Edwin H. Duff forwards me to-day a copy of letter sent to your committee by Hon. Martin A. Knapp, chairman Interstate Commerce Commission, in which this clause occurs:

The second proposed amendment, in the following language, "This act shall not be held to affect the limitation of liability of water carriers or water transportation as now provided by law," is, as we understand it, intended to leave the liability of

water carriers as now existing; however, that may be affected by the Harter Act and Carmack amendment. We see no objection to this, and it seems that the language proposed is in all respects appropriate to the end intended.

This is the first intimation I have had of the exact language which the committee has favorably considered, and with your permission I desire to state that the language is very limited in application, and only reaches to a question of limitation of liability.

The amendment suggested by the water lines in this respect is as follows:

and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

This last amendment was suggested in order to clear up the ambiguity contained in the twentieth section of the act known as the Hepburn amendment, wherein the initial liability was attempted to be placed on the initial line for the haul clear through to destination. It is apparent that if that provision applies to a water line, all the marine statutes relating to risks at sea are wiped out. This not only includes the act limiting liability, but includes the act exempting against liability, and also the Harter Act and others. There is a very great distinction between the act limiting liability in the case of a total loss and the act exempting against fire at sea. In the case of limitation of liability, the limitation is not complete unless there is a total loss. The salvage secured from an accident must be surrendered as a part payment of claims where limitation of liability is pursued, but in a case of fire at sea there is a complete exemption regardless of the amount of salvage secured; so likewise are the exemptions contained in the Harter Act touching questions of navigation. The Harter Act exempts a vessel in relation to errors of navigation covering cargo, even though there be negligence on the part of the crew, without privity or knowledge of the owner.

There are, therefore, a variety of statutes which may be affected by the twentieth section of the Hepburn Act.

This matter was, as indicated, one of some doubt, but the further proposition to include water lines on through routes brings such lines in so definitely that there seems to be little doubt that the marine statutes are wiped out by the proposed acts before you more effectually than was thought to exist under the law as at present.

We understand it is the public desire, the desire of the committee, and also the desire of all the public officers connected with this question, to make the law definite that water carriage is not to be affected by the commerce acts in such way as to withdraw the benefits designed in the interest of water transportation by any implication in the commerce acts.

Therefore the matter may be stated that under the law at present there is some doubt of the repeal of these statutes. Under the effort to include water carriers in through routes there is less doubt, and it would appear that all these statutes are repealed, unless there is some saving clause put in the present bills.

Now, to make an amendment in effect touching only limitation of liability may be regarded as only relating to the act limiting liability, which is definitely known under that name, and by implication it could be asserted that all other acts, except the act limiting liability, were repealed. Indeed, it would appear from the letter of the chairman of the commission, who is so experienced in these matters, that



the committee's effort seems to be interpreted to leave the law as at present, and (in the language of the chairman) "however, that may be affected by the Harter Act and Carmack amendment."

I don't know that I interpret the meaning of this correctly, but it may be that it is supposed that the committee intends to leave the law as at present under the Carmack amendment, and to effect in the proposed amendment to save the water lines language which will prevent the bills before you from making any further change.

It is the desire of the water lines to settle this matter of the possible repeal of the great marine statutes, both in the effect which the Carmack amendment has and in the effect which the proposed bills before you have, and, to prevent any ambiguity, the language as proposed is: and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

This language is general and covers all such acts, but when we undertake to particularize we are apt to overlook in the language certain acts which ought to be covered, and if in particularizing we point out some acts which are not intended to be affected it may be argued that all other acts were intended to be affected, which I do not understand it is the committee's intention to do.

Therefore, I particularly urge in this part of the amendment that the language suggested by the water lines be used. There can seem to be no good reason why laws passed for the protection of water transportation should not be left in full force, without interference by any of the commerce acts. If those laws are not right, they can be changed, but they certainly ought not to be put in danger of repeal by any ambiguous language in the commerce act.

I know it is the committee's desire to get all the light possible on this question before coming to a final decision, and I trust this part of the amendment proposed by the water lines may not be passed over without giving it the fullest consideration and, I hope, adoption by the committee.

Yours, very truly,

DANL. H. HAYNE.

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THE CHAMBER OF COMMERCE OF SAN FRANCISCO,  
*San Francisco, Cal., March 1, 1910.*

To the PRESIDENT,  
*Washington, D. C.*

MR. PRESIDENT: In behalf of the board of trustees of the Chamber of Commerce of San Francisco, I have the honor to confirm the following telegram forwarded to you under date of February 26:

We respectfully protest against the enactment of Senate bill 5106 and House bill 17536, intended to amend the Hepburn Act and subjecting all water carriers maintaining a schedule service on regular lines to the control of the Interstate Commerce Commission. This bill if enacted would paralyze the coastwise shipping lines.

And inclose a copy of a letter addressed to Hon. S. H. Piles, United States Senate, which fully explains the views of this chamber in relation to proposed legislation subjecting all water carriers maintaining a schedule service on regular lines to the control of the Interstate Commerce Commission.

Yours, very truly,

C. W. BURKS, *Secretary.*

FEBRUARY 16, 1910.

Hon. S. H. PILES,

*United States Senate Chamber, Washington, D. C.*

DEAR SIR: We are advised that eastern shipping interests are fearful that the committees having under consideration S. 5106, introduced by Mr. Elkins, and H. R. 17536, introduced by Mr. Townsend, which bills are intended to amend the Hepburn Act, so called, are disposed to report those bills for passage with provisions therein so worded as to bring water-carriers maintaining a schedule service on regular lines subject to the control of the Interstate Commerce Commission; this not only as to such interstate transportation as they may have by reason of their voluntary connection with rail carriers, but as to all of their interstate transportation, even though it be entirely by water.

If that be done, the provisions of the Hepburn Act which would most seriously cripple such water carriers would be, first, those which inhibit a change in transportation rates except at the expiration of thirty days or such lesser time as the commission on special application therefor may permit, and second, the provision of section 20 of that act which provides: "That any common carrier receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contracts, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed."

The provision first above referred to—unless the commission be given authority to and shall fix a schedule of rates for the transportation by water of all kinds of property between all domestic water points, whether by vessels of regular lines or those making a single voyage; in effect, charter rates for all vessels between domestic ports—would prevent carriers operating vessels on a regular schedule from meeting competitive conditions that might at any time arise through the operation of what are commonly known as "tramp" vessels, while the second may be so construed as to deprive the shipowner of all right to a limitation of his liability as provided by sections 4281–4283, Revised Statutes, and the act of February 13, 1893, the "Harter Act," so called, in connection with loss of or damage to property shipped for transportation, whether partly by rail and partly by water, or entirely by water.

All must admit that the monopolistic conditions attending transportation by rail are entirely absent from water transportation. This because all navigable waters are open to the free use of any vessel that anyone may at any time choose to employ, and a tramp vessel may at any time be placed on any route in competition with vessels operated on a regular schedule; while a railway, as to the territory it covers, is entirely free from such competition.

These inherent differences in the conditions attending the two kinds of transportation serve to show that regulations that may be needed for one are not at all necessary for the other; and clearly show that competition of shipowners, each of whom has the same right as any other to operate his vessel on a given line, may be safely intrusted to maintain reasonable water transportation charges between all water points; while, on the contrary, like competition in rail transportation not being possible, there may be need that railway transportation charges be subject to the commission's control.

Reverting to the provisions of section 20 of the Hepburn Act referred to, we can not think that it can have been or can be the intention of Congress to deprive the shipowner of the benefit of the statutory limitation of his liability as heretofore provided—a right which was given to induce the investment of capital in ships, and thereby increase the American merchant marine. That the shipowner has had such right has never been a cause of complaint. We can therefore see no good reason why that right should now be limited or taken entirely away, in view of the present strenuous demand that additional inducements be offered for the investment of capital in ships, this to the end that this country may not only have at its command such vessels as may be needed for the transportation of its products, but also such as may in time of war be needed as aids to its navy.

We are strongly impressed with the idea that when Congress enacted the quoted provisions of section 20 of the Hepburn Act its attention was so fixed upon the regulation of rail transportation that it failed to realize the repealing effect which these provisions might have on the statutes limiting the liability of shipowners, and that had its attention been directed to such repealing effect it would have so modified

those provisions as to have made it certain that it was not intended to thereby repeal or modify any statute limiting such liability. As the Hepburn Act is now a subject for amendment, we sincerely hope that you may see your way clear to advocate its amendment in such manner as to relieve water carriers from the dangers and hardships above referred to, and that you will use your great influence with the committees having the bills referred to in charge to procure the report of those bills in such shape that transportation by water shall not be brought under the provisions of the amended Hepburn Act.

Yours, truly,

\_\_\_\_\_, *Manager.*

MARCH 30, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: On the 21st ultimo, when I was before the Committee on Interstate and Foreign Commerce, you interrogated me as follows:

Does not the present practice sometimes lead to considerable extravagance in taking care of cases? For instance, I had my attention called last spring, when I was home, by accident, to three attorneys from the Interstate Commerce Commission, each appearing in Chicago before one of the courts there—all before the same court—and each one in a different case, on a motion where the entire three motions were disposed of in less than ten minutes' time, but it required three attorneys of the Interstate Commerce Commission to make a special trip to Chicago on a limited train in order to appear in three cases on formal motions that I would have sent an office—not an office boy, but a clerk in the office—to attend to, and to all three of them at once. (See Record of Hearings, p. 1262.)

At that time I was not acquainted with the pertinent facts, but I have since obtained them, and they show that your information is incorrect. I respectfully request, therefore, that you cause such change in the record to be made as you may think justice to the commission and its attorneys requires.

Having learned that a statement similar to that made by you was made by the United States attorney located at Chicago, the secretary of the commission, by letter, asked the United States attorney for full particulars, and in reply that gentleman said:

I find on referring to the records that on April 12, 1909, Mr. Walter appeared in case No. 29393, C., M. & St. P. Ry. Co. v. I. C. C., and the clerk's docket shows that the motion presented was to set the case for hearing on April 19, which was granted.

Mr. Farrell appeared in case No. 29328, C., M. & St. P. Ry. Co. v. I. C. C., and the clerk's docket shows that this case was also a motion to set the case for hearing on April 19, which was granted.

I do not at this time find any data which enables me to state positively as to the presence here of the third attorney at that time. I do, however, find that case No. 10148, in the district court, of the United States v. A., T. & S. F. Ry. Co. was tried on April 15. My recollection at that time is that Mr. Dougherty (Doherty), attorney for the commission, came here on Saturday, April 10, and remained until after the close of the trial. If my recollection with reference to Mr. Dougherty (Doherty) is correct, the three attorneys, therefore, who were present here on April 12 were Messrs. Walter, Farrell, and Dougherty (Doherty).

The fact is that Mr. Farrell is the only one of the commission's attorneys who was in Chicago on said April 12, and he went there, not to make a motion in any case, but to make oral argument in case No. 29328, above referred to, which had previously been assigned to him for attention, and in which he had before that date prepared a brief. At that time Mr. Walter was at his home in Kentucky, having been called there by the serious illness of his mother, and Mr. Doherty was at the commission's office in Washington. If the record in the clerk's office shows that Mr. Walter was in Chicago on April

12, 1909, the record was made in error, and the United States attorney has been informed to that effect.

Of the three cases mentioned, two were rate cases, assigned, respectively, to Mr. Walter and Mr. Farrell for attention, and originally set for hearing before the United States circuit court in Chicago on said April 12. On that date, however, the three judges before whom cases of this character must be heard were not available. Therefore, Judge Kohlsaas, who was the only circuit court judge in Chicago at that time, adjourned the hearings to the following Monday, and the cases were, in fact, argued orally on April 20 and 21, 1909. In addition to arguing case No. 29393, Mr. Walter argued what is known as the Missouri River rate case, on motion to dissolve an injunction which had previously been issued by the court. From Chicago Mr. Farrell went to St. Louis, where he was engaged for more than a week assisting in the introduction of testimony before a master in the cattle case, so called, and Mr. Walter went to St. Paul to engage in similar work in the lumber cases, which involve rates from Pacific coast points to points in the East and Middle West. At the conclusion of the arguments in Chicago the court dismissed the petition of the railroad company in case No. 29328; but I understand no decision has as yet been rendered in case No. 29393.

The third case was a test case under the "hours-of-service" law as applied to telegraphers. This was assigned for hearing in the district court at Chicago on April 15, 1909, and for the purpose of participating in the trial Mr. Doherty, who had previously given considerable attention to the matters involved, went to Chicago, where he arrived on April 14. The trial began on April 16, but was not concluded until April 21, when a verdict for the Government was ordered by the court.

In this connection I think best to explain somewhat a matter which does not appear to be generally understood. In section 15 of the act to regulate commerce it is provided that—

All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction.

And a provision in section 16 of the act reads as follows:

That no injunction, interlocutory order, or decree suspending or restraining the enforcement of an order of the commission shall be granted except on hearing after not less than five days' notice to the commission.

Generally speaking, it is true that only important orders made by the commission are resisted by the carriers, and while the attorneys of the carriers have thirty-five days at least—that is to say, the thirty days' notice provided for in section 15 and the five days' notice provided for in section 16, as above pointed out—in which to prepare briefs and other documents to be used by them in each instance at the hearing in court upon application for a preliminary injunction, the attorney who has to contend on behalf of the commission against the granting of such injunction may not have more than the five days' notice provided for in section 16 in which to prepare answer to the carrier's bill of complaint and such other documents as it may be necessary for him to use at the hearing. Therefore, without previous knowledge concerning the subject-matter of the suit in court, the attorney who represents the commission can not reasonably be

expected to make a thorough or effective defense to the carrier's contention. Heretofore this difficulty has been obviated, to some extent at least, by giving notice to the commission's attorneys, both of the orders which are likely to be resisted by the carriers and of the orders a particular attorney will be expected to defend, if compliance with their terms is resisted by the carriers.

But while it has been possible to supplement in this way the notice the commission's attorney would otherwise have, it has not been possible to assign to a particular attorney all cases brought in a certain circuit, or even all cases to be heard at a particular place. It is perhaps universally true that orders attacked are issued against carriers, one at least of which operates lines of railway in more than one circuit, and for this reason the circuit a suit will be instituted in can not be known definitely in advance.

It is not necessary for me to impress upon you the importance of convincing the court that a preliminary injunction should not be granted. If a preliminary injunction is granted it is usually made permanent upon final hearing, while if a preliminary injunction is refused, a permanent injunction is refused also, and the action taken by the circuit court practically determines whether or not an order of the commission shall be allowed to have any effect, because the time limit of two years, above referred to, will have expired before decision can be obtained from the appellate court.

An illustration of the disadvantages under which the commission's attorneys labor may not be out of place in this connection. The case of *N. Y. C. & H. R. R. Co., et al., v. Interstate Commerce Commission*, No. Eq. 3-107, then pending in the circuit court for the southern district of New York, was assigned to one of the commission's attorneys for attention, and when he appeared before the court to resist an application of the carriers for a preliminary injunction, counsel for the carriers presented to the court and to him a brief of 55 printed pages. This presentation was at the moment the counsel referred to arose in court to make oral argument, and therefore the commission's attorney who had to make a reply to such argument had no time to examine the brief. In this particular case, however, the court evidently noticed the disadvantage under which the commission's attorney was placed, and in a few days after the case was submitted for decision, handed down a memorandum wherein it was provided that the commission might have three weeks in which to present a reply brief, and that the carriers might have an additional two weeks in which to answer such brief. In accordance with such permission a reply brief was prepared and filed by the commission's attorney, and later, in a decision of the court which sustained every material point made in the brief, the application for preliminary injunction was denied. I inclose herewith for your information a pamphlet copy of the decision.

I respectfully submit that in view of the circumstances above described, and for other reasons which will readily occur to you, it would not be practicable either to have the commission's orders defended by the United States attorneys and their assistants, or to so arrange that not more than one of the attorneys from Washington would be engaged in court at a certain place on or about the same date.

Very respectfully,

JUDSON C. CLEMENTS,  
*Commissioner.*

CHICAGO, April 2, 1910.

HON. JAMES R. MANN, M. C.,  
Washington, D. C.

DEAR FRIEND MANN: Please send me copy of the railroad bill now before Congress. If this bill does not provide that the railroads shall furnish cars within a reasonable time and move them a reasonable number of miles per day or move them within a reasonable time after same are loaded, it will fall far short of its object.

The people of the United States are depending on prompt and efficient transportation for the means of life and existence. They want service for which they pay, and there is now no law on the statute books requiring railroad companies to perform service. We have had this matter up with the Interstate Commerce Commission a number of times during the past three years, and we have had it up with them daily during the past six weeks, and their claim is that our remedy in each case is by a civil case for damages, which is long and expensive and gives no relief.

We are heavy shippers, shipping coal from 7 different States into 11 different States every month, and at the present time we have 25 cars scattered over 7 different States in different cities refused by individual car-lot customers on account of the long and unnecessary delay in delivery. Cars were accepted by the railroad company, bill of lading issued, and then sidetracked somewhere en route, and in spite of our repeated requests to get them moved forward and delivered they failed to deliver them inside of a reasonable time, and the majority of the cars were detained over six weeks in transit, when a reasonable running time was six days. This running time is based on testimony of leading railway officials before the Interstate Commerce Commission, and is printed in their report of same. The shipper is powerless to enforce his rights, as the law makes the railway company the agent of the consignee, not of the shipper, and if we have to sue the railroad company, they claim that our case is against the consignee, not against the railroad company, and that if the consignee had accepted the coal we would not have sustained any loss.

A consignee can not enforce his rights against the railroad company, as out of ninety-nine cases out of a hundred his coal yard is located on the right of way of the railroad company with a nominal lease for a year, subject to cancellation with a thirty days' notice, and the moment he commences suit against the railroad company to collect damages on a refused car his lease is canceled and he is notified to remove his sheds from the right of way. The railroad company comes back on the shipper and asks him to give disposition for the refused car, charging him in the meantime \$1 per day car service and \$2 per car for reconsigning same, although the refusal is caused directly by the acts of the railroad company in failing to perform their duty as common carriers within a reasonable time. They sidetrack the coal and move it as they see fit.

We have been sending copies of our correspondence with railroad officials to the Interstate Commerce Commission daily to show them the actual condition of affairs and the difficulties we have in getting our commodity delivered within a reasonable time. This correspondence will be available for any Congressman in the future who desires it to present it as an argument for increased legislation empowering the commission or making it a fundamental law of the land that rail-

roads shall give service for which they exact payment. If they tried to handle passengers and United States mail in the manner in which they try to handle freight every telegraph pole would be decorated with a railroad official until we did get better service.

Parties who are freezing to death for want of coal when same has been purchased and shipped them, and which they should have received within a reasonable time, can not wait until they file a complaint with the Interstate Commerce Commission and have the commission investigate same. They are relying on the commission to see that the railroad companies keep their equipment up to the necessary state of efficiency to give prompt service.

The Chicago and Northwestern Railway has paid 7 per cent dividends for the past ten years, and during that time they laid aside a surplus of \$49,000,000, and yet during the past winter they have delayed more cars of ours than any other road out of Chicago. They either lack engines and men or else lack better officials behind the men to see that they do their duty. They now insist that we assume the loss on account of their electing to move the coal at their convenience, instead of within a reasonable time and in the order in which they receive it from connecting lines.

The law specifically provides that there shall be no discrimination as between persons, places, or property; yet they accepted our coal, moved it forward a few miles, sidetracked it, and delivered it months afterwards, as it suited their convenience. What chance have we to enforce our rights against a large corporation like the Chicago and Northwestern Railway, and especially when railroad attorneys are made Attorneys-General and an attorney for the same company is being considered for the supreme bench? We mention all this so that you can readily understand the necessity of some provision in the law empowering the commission to lay down reasonable rules and regulations for the movement of freight. The Postmaster-General can impose a penalty on the railroads for not moving the mail promptly, claiming it is for the benefit of everyone concerned that mail be delivered promptly. Of what use is it to a customer to receive an invoice for a car of coal by mail promptly if he fails to receive the coal within a reasonable time and freezes to death pending the arrival of the coal? If coal was shipped in ton lots to individual consumers all over the United States instead of to dealers who expect to make a profit out of the resale of it the delays the past winter would have raised a bigger mob than in Coxey's army to start for Washington. If at any time when you return to Chicago and desire to discuss this question with the writer, I will be pleased to entertain you at the club and cite you numerous cases of injustice along these lines.

With kind regards, I remain, yours truly,

S. P. HOSTLER.

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WASHINGTON, D. C., *April 1, 1910.*

DEAR MR. MANN: I am still confined to my house, and if I am able to do so, shall go to Massachusetts to-morrow (Saturday) afternoon to be in Worcester with the President on Sunday, where he addresses a large meeting of railroad men.

I have had time at home to give the pending railroad bill some attention, and some time ago got into correspondence with Mr. Byrne, sending him from time to time the amendments to the stock-issuing features of the bill. I regard him as a very painstaking and competent person. I sent him some days ago the last print of the bill, No. 23429, and he has suggested amendments, some of which he thinks are vital to the measure. I inclose a copy of these amendments, and I think it would be advisable to have them printed in order that they may be considered by the committee and adopted as committee amendments if desired. I wish you would scrutinize these very carefully, and I will take an early occasion to see you in regard to the matter. Mr. Byrne sent a young man down from his office, and I have been over these amendments with him this morning.

Yours, sincerely,

C. G. WASHBURN.

HON. JAMES R. MANN,  
*House of Representatives.*

FIRST AMENDMENT.

Substitute the following for page 48, line 9, to page 49, line 24, inclusive, of H. R. 23429:

"SEC. 17. That a new section be added to said act to regulate commerce, to be numbered as section 25, as follows:

"SEC. 25. That no railroad corporation which is a common carrier subject to the provisions of this act as amended shall hereafter issue for any purpose connected with or relating to any part of its business governed by the provisions of this act as amended any stock, bonds, or other evidences of indebtedness (excepting notes maturing not more than two years from the date of their issue) to an amount exceeding that which may from time to time be reasonably necessary for the purpose for which such issue of stock, bonds, or other evidences of indebtedness may be authorized, nor without previous or simultaneous payment to it of not less than the reasonable value of such stock, bonds, or other evidences of indebtedness.

"The amount of said securities reasonably necessary for such purpose and the reasonable value thereof shall be ascertained by the Interstate Commerce Commission which, within ten days after the final hearing upon an application therefor, shall issue a certificate to the corporation stating the respective amounts of stock, bonds, or other evidences of indebtedness reasonably necessary to be issued for the respective purposes, and stating the reasonable value of such securities, respectively. Such corporation shall not apply the proceeds of such stock, bonds, or other evidences of indebtedness to any purpose not specified in such certificate without the previous determination by the commission that the amount so to be applied is reasonably necessary for such purpose, and no property, services, or other thing than money shall be taken in payment to the corporation of the price of such stock, certificates of stock, bonds, or other evidences of indebtedness, unless the Interstate Commerce Commission shall have ascertained and stated in a certificate issued by it to such corporation, or to any person or persons intending to form such corporation, and recorded with the commission before the issue of said stock, certificates of stock, bonds, or other evidences of indebtedness that the fair value of such property, services, or other thing than money is at least equal to the reasonable value of such stock, certificates of stock, bonds, or other evidences of indebtedness."

The possible implication of a discretion to authorize and to refuse to authorize security issues given to the Commerce Commission in the second paragraph of the House bill is probably more apparent than real, but we fear that the use of the words "decision," "authorize," etc., which are certainly ambiguous, may make the provision unconstitutional as a delegation of arbitrary power. See *State v. Great Northern Railway* (Minn., 111 N. W., 289). The same possible implication is carried by the provision on page 49 reading, "Such corporation shall not apply the proceeds of such stock, bonds \* \* \* to any purpose not specified in such certificate," which might be deemed to confer upon the commission the authority not only to determine



the amount of securities necessary for the purpose proposed and the value of the securities, but authority to veto the issuance of securities for any particular purpose or purposes. We think it should be made perfectly clear, as is certainly your intention, that the commission shall, as an administrative body, merely determine two specific questions of fact, namely, the value of the securities proposed to be issued and the face amount necessary for the purpose authorized. The latter, of course, will depend upon the former. When these questions have been determined, it should and will rest with the board of directors of the corporation to determine whether or not the issue is to be made.

In the second place, the section as revised expressly prohibits the sale of the securities at less than their reasonable value. While this is a more practical way of dealing with the subject, it is no more effective than the form adopted in the original bill, which is now pending in the Senate, namely, to prohibit only the "issue," but to prescribe, as a condition precedent to the issue, the payment of the price determined to be the reasonable value. If this were the only section affected, of course, it would be immaterial which method of prohibition should be adopted, but since throughout the act prohibits and affects only the issue of securities, and, if a change in method is to be adopted in this section, it must be accompanied by numerous changes in the subsequent provisions, both in section 17 and in section 18; probably the easier and safer method would be to revert to the original form. We also think that the administrative features at the top of page 49 may be somewhat condensed, and we suggest that the provision permitting the commission to delay its decision thirty days after final hearing is unnecessarily burdensome.

We think two-year notes can best be taken care of by excepting them altogether from the prohibitions in the act and by restoring the original safeguards when it comes to issuing securities to refund discount. Such safeguards will very effectually prevent the improvident issue of such notes, but will not prevent legitimate issues. On the other hand, a provision that such notes shall not be sold in a greater amount than "reasonably necessary" nor at a price below their "reasonable value" will practically prevent entirely the issue of such notes, for no directors will be willing to risk imprisonment on the question whether they have correctly determined these factors, and since there is no provision permitting the certificate of the Interstate Commerce Commission to be given for such notes the result will probably be entirely to prevent the issue.

We fully approve of the elimination of the express requirement that stock shall not be sold at less than par, but, of course, no investor will be willing to take such stock at a value certified by the commission to be less than par, if, as is generally the case, the state law requires payment of par value, and thus be on record as violating the state law. We think that the only way your purpose can be made practicable is to provide that when stock is taken for property, the commission shall not certify the value of the property and the value of the stock in money, but shall merely certify that the value of the property is at least equal to the value of the stock. This will furnish the same protection to the investor, but will leave the question as to whether or not the stock is, in fact, issued below par to be determined as now by state law, and no increased liability will be placed on the subscriber. We think such a provision essential to carry out as a practical matter the purpose of your amendment.

As so amended, we think the section will be a great improvement over section 13 of the original bill, and will not impose such an unfair burden on the construction of lines by the weaker roads in undeveloped territory.

#### SECOND AMENDMENT.

Strike out all after "not exceed," in line 23, page 54, through "to be reorganized," in line 6, page 55, and substitute (as in Senate bill) the following: "in par value, the aggregate amount, par value, of the stocks of the corporation or corporations so reorganized or to be reorganized pursuant to said plan (being, in the case of each corporation, the stock outstanding at the date of said certificate of the Interstate Commerce Commission or of the previous dissolution of such corporation) shall not be deemed to be prohibited by anything contained in this act."

We see that you have limited the amount of stock to be issued on reorganization to the fair value of the property of the corporations reorganized, in no case exceeding the par value of the stock of such corporation. It is not clear whether "fair estimated value of the property" refers to the physical value of the property unencumbered or to the equity acquired by the new corporation after deducting the face amount of the bonds left undisturbed or the net value represented by stock of the new corporation after deducting the entire bonded indebtedness, new and old. Of course, this ambiguity should be cleared up, and we can not believe that you intend to limit the issue

of new stock to any amount less than the entire physical value of the property, for if the limit is to be the net value—that is, the value of the interest of the corporation in the property—then the further limitation that the amount of new stock shall in no case exceed the amount of old stock would be in direct conflict with the theory of section 17. As a practical matter we believe that the amount of stock of the reorganized corporations will seldom if ever exceed the physical value of the entire property. We therefore think that in practically all cases under your amendment the amount of the new stock will in fact be limited by the amount of the old stock, and the limitation to the value of the property will be of no practical effect. We further think that occasionally the practical problem of reorganization in which the public's interest is vital may really require an issue of new securities for the old at the rate of dollar for dollar, regardless of the value of the property. Our conclusions are, therefore, that the limitation which you have inserted will either be found to be unnecessary, or, if not so construed, will accomplish a result which we can not believe you intend. We therefore suggest that the original phraseology be retained.

#### THIRD AMENDMENT.

On page 56, line 1, after "subject," substitute (as in Senate bill): "plus interest upon bonds issued as aforesaid for new money."

It is provided at the foot of page 55 that the interest charges of the new company shall not exceed the charges of the companies which are reorganized. In case, however, a large amount of new money is paid in on reorganization and bonds issued therefor, it may be necessary and certainly would be proper that, to the extent of the interest on bonds so issued against new money, the interest charges of the new company shall be allowed to exceed the charges of the old. Provision is made for this in the bill now before the Senate.

#### FOURTH AMENDMENT.

Page 56, line 6, at end of paragraph, insert (as in Senate bill): "or to prevent the issue, in addition to the stock hereinabove specified, of an amount of stock of the new corporation in lieu of, but not exceeding the face amount of, bonds and other obligations which, under the provisions hereof, the new corporation might issue, and no issue of stock, bonds, or other evidences of indebtedness by any new corporation, which it may make consistently with the rules prescribed by section twenty-five of this act, shall be deemed to be prohibited by anything in this section contained."

In a sound and conservative reorganization it is frequently necessary to replace outstanding bonds with new stock, and we certainly think this should be permitted. The original act provided, in substance (H. R. 21232, p. 38, line 20, to p. 39, line 4), that on reorganization, the new company might issue an additional amount of stock in lieu of any bonds or other obligations which it might issue consistently with the provisions of this section or of the preceding section. We believe this clause to be very valuable and think it should go back in the act. In line 5 of page 56 of the new bill the word "stocks" certainly contemplates the possibility of the issue of stock to replace bonds, and we do not believe that the relative amounts of the various securities to be issued should be made any more rigid than in the original bill.

#### FIFTH AMENDMENT.

On page 56, lines 10 to 12, strike out: "and such consolidation or merger shall consist in uniting the organizations, properties, businesses, and stocks of said corporations; and"

And substitute therefor (as in Senate bill) the following: "without increase in the aggregate amount of the stocks of the corporations so consolidated or merged and without increase in the aggregate amount of, or the aggregate interest payable upon, the bonds or other obligations of said corporations so consolidated or merged; or,"

On page 56 and page 57, in the case of a merger, whether by actual corporate consolidation or by the purchase of securities of one company by another, you have eliminated the provisions that there may be issued new securities up to the par value of the securities of the companies so merged, retaining, however, the alternative (which, we understand, was intended only to cover the case where the existing companies may be undercapitalized). The practical result of this elimination must, almost inevitably, be that no such mergers will take place, although everyone (most of all, the commission) recognizes that the consolidation of continuous lines is highly desirable. We understand the theory of the bill to be wholly prospective and not an attempt to reduce the capitalization of companies whose securities are now outstand-

ing. In the case of a merger, while it is true technically that new securities are issued, yet as a practical matter, such new securities are merely new pieces of paper substituted for the old, and the aggregate amount of securities outstanding in the hands of the public is not increased. If, as the Interstate Commerce Commission has stated, "it is in the interest of the public to facilitate the consolidation of connecting lines," and, as we believe, the effect of the proposed House bill will be absolutely to prevent such consolidation in practically all cases (except where the railroads are so rich that their stocks and bonds are selling above par), then certainly the provisions of the original bill in this respect should be restored, both in the paragraph with reference to corporate consolidation and in the following paragraph with reference to the purchase of securities, which, we understand, was inserted to cover a case of merger by security purchase, where state laws might not authorize a complete corporate consolidation.

To illustrate a case of consolidation: Suppose two connecting railroad companies propose to consolidate and each have outstanding \$10,000,000 bonds and \$10,000,000 stock. The bonds are selling at 80 and the stock at 70, and assume that the market value of the securities is a fair index of the actual value of the properties. This will mean that the value of each railroad is \$15,000,000, and the value of the properties of the consolidated corporation, \$30,000,000. When the companies consolidate, the bonds, which can not be called in, remain a charge on the property, in face amount \$20,000,000. Now, if the aggregate of the securities issued or assumed by the consolidated company is limited to \$30,000,000 it is evident that the new company can issue only \$10,000,000 stock to take the place of the \$20,000,000 theretofore outstanding. Since the \$20,000,000 of old stock is selling at 70, the theoretical value of the new stock (half the amount) should be 140. But as a practical matter, remembering the difficulties in selling stock above par, the new stock will probably have a market value of considerably less than 140. Under these conditions the old stockholders will properly refuse to turn in their stock, thus making consolidation impossible. On the other hand, if, as the Senate bill provides, stock and bonds may be issued or assumed, par for par, for the securities already outstanding, the old stockholders will merely change the form of their securities without any increase whatever in the aggregate outstanding in the hands of the public. Only under such circumstances can such a consolidation take place.

#### SIXTH AMENDMENT.

Page 57, line 14, after "issued," insert "either (a)," and in line 17, page 57 (as in Senate bill), at end of paragraph, insert "or (b) shall not exceed the aggregate par values of the stock and bonds so acquired, but without increase in the aggregate interest payable upon the bonds or other obligations so acquired."

The foregoing arguments with reference to the proposed fifth amendment apply here also.

We also think, however, that if the original provisions can not be restored as here suggested, then the whole paragraph on page 57 would better be eliminated, leaving the question of issuing securities to provide funds to purchase securities of other roads to be governed entirely by section 17.

#### SEVENTH AMENDMENT.

If the last two amendments are not acceptable, then the first paragraph concerning reorganizations should be made to cover the incidental consolidation of temporary corporations formed in the course of reorganization, and, in addition, on page 56, strike out the parenthesis beginning line 16 and ending line 22. It should be made clear that a necessary consolidation as a step to reorganization is not affected, but is governed wholly by the paragraph concerning reorganizations. To accomplish this, insert at end of reorganization paragraph the following:

"If any such plan of reorganization shall contemplate that as a step to the carrying out thereof several corporations shall be utilized and that there shall be consolidations of some or all of them or the acquisition by any of them of the property or securities of the others, the application for the certificate of the Interstate Commerce Commission shall so set forth, and the corporation which under the plan is to issue the securities distributable thereunder, whether a corporation resulting from such consolidation or otherwise, shall not be prohibited from issuing its stock, bonds, or other evidences of indebtedness in conformity with the provisions in respect of a new corporation contained in this paragraph."

As an alternative to accomplish the same purpose, which, however, may not be so construed, insert on page 54, line 7, after "to be utilized," the following: ", including

any corporation resulting from the merger or consolidation of any such corporations so utilized or to be utilized or acquiring the properties or securities thereof."

If the committee is unwilling to adopt the fifth and sixth amendments suggested above, then we think it essential that the parenthesis on page 56, from line 16 to 22, inclusive, should be stricken out. As it now stands, it is not clear whether a reorganization which, as a merely incidental step or piece of machinery, involves a consolidation is governed wholly by the first paragraph of the section or whether the second paragraph also applies. We do not believe it can be your intention to facilitate a reorganization of a single road while effectually preventing the reorganization of two roads operated together, which it may be necessary to consolidate as a prerequisite to reorganizing or to complete a reorganization.

We further believe that it should be made absolutely clear that the paragraph with reference to reorganizations covers the whole subject, whether or not a consolidation may be incidentally involved, and we think it essential that one or the other of the alternative amendments suggested above be inserted in this paragraph. We fear that unless this is done the provisions with reference to reorganizations will not in fact accomplish what they purport to do, and we believe that if the committee has accepted the theory of the administration that reorganizations should be facilitated there is no other way to accomplish this result in the vast majority of cases, where the railroad to be reorganized runs through several States, by reason of the conflicting laws of which temporary intrastate corporations must be formed and subsequently consolidated.





# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XXVI

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

### HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman.*

IRVING P. WANGER, PENNSYLVANIA.

FREDERICK C. STEVENS, MINNESOTA.

JOHN J. ESCH, WISCONSIN.

CHARLES E. TOWNSEND, MICHIGAN.

JAMES KENNEDY, OHIO.

JOSEPH R. KNOWLAND, CALIFORNIA.

WILLIAM P. HUBBARD, WEST VIRGINIA.

JAMES M. MILLER, KANSAS.

WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.

CHARLES G. WASHBURN, MASSACHUSETTS.

WILLIAM C. ADAMSON, GEORGIA.

WILLIAM RICHARDSON, ALABAMA.

CHARLES L. BARTLETT, GEORGIA.

GORDON RUSSELL, TEXAS.

THETUS W. SIMS, TENNESSEE.

ANDREW J. PETERS, MASSACHUSETTS.



## BOILER INSPECTION.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Friday, March 25, 1910.*

The committee this day met, Hon. James R. Mann (chairman), presiding.

The CHAIRMAN. You may proceed.

Mr. WILLS. Mr. Chairman, we were expecting General Uhler.

The CHAIRMAN. What bill do you especially refer to? Has there been any new bill introduced?

Mr. WILLS. Yes, sir; it is H. R. 22066. We had expected that General Uhler would be here this morning, and I would like to ask that when he comes he be given preference over me.

The CHAIRMAN. You mean General Uhler, of the Department of Commerce and Labor?

Mr. WILLS. Yes, sir.

The CHAIRMAN. We can get him here at any time that the committee is ready to hear him. We called the meeting this morning at considerable inconvenience to the committee for the purpose of giving a hearing especially to those gentlemen from out of the city who happen to be here.

Mr. WILLS. If there is any such person present, I shall be glad to give way, but it was my understanding, while I wrote you about this meeting—

The CHAIRMAN. Mr. Roe wrote to me the other day saying that there were some gentlemen here who had attended the hearings before the Senate committee and who were still in this city, awaiting to be heard by this committee, and he asked if we could set an early day. After ordering the interstate-commerce bill reported yesterday we fixed immediately to-day to hear those gentlemen. Of course, we are willing to give you the entire time, but we may not be able to meet again to-morrow, and if there should be anyone from out of the city who wishes to be heard, it would, perhaps, be better to give him an opportunity to be heard at once, because we can hear you and General Uhler at a later date, if necessary.

Mr. WILLS. I shall be glad to do that, but to the best of my knowledge there is no one present.

The CHAIRMAN. Mr. Roe, have you anybody from out of the city who wishes to be heard?

Mr. ROE. Mr. Jeffery and Mr. Newland and another gentleman or two who are not here.

The CHAIRMAN. I see a gentleman here from my district, Chicago, but I do not know whether he desires to be heard or not. Do you wish to be heard, Mr. Seng?

Mr. SENG. No, sir.

Mr. WILLS. There is a gentleman here, Mr. Ruefly, who, while he lives in this city and is here to-day, may not be able to be here to-morrow, and I would suggest that the committee hear from Mr. Ruefly.

The CHAIRMAN. You may proceed, Mr. Ruefly.

**STATEMENT OF MR. OREN RUEFLY, WASHINGTON, D. C.**

The CHAIRMAN. What is your occupation?

Mr. RUEFLY. I am a practical boiler maker.

The CHAIRMAN. Located where?

Mr. RUEFLY. At the present time I am located in the navy-yard here in Washington.

Mr. TOWNSEND. Working for the Government?

Mr. RUEFLY. Yes, sir; at the present time.

Before the Senate Committee on Interstate Commerce I related some few instances that had come under my personal observation that I knew to be not right, and I made a statement, I believe, in regard to a boiler explosion that happened at Roanoke, Va. As I stated then, there was a damage suit in that case. The company claimed that it was due to low water. While any expert that the company might bring in, of course, might say that it was due to low water, no practical boiler maker would say so. You will find that in those cases they never bring in a man who is an expert boiler maker. It is always a college graduate from here, there, or some other place in the country. This particular boiler, I wish to say, was in an old-time 8-wheel locomotive. The explosion happened just before I got to Roanoke. A fellow came and took me around to the boiler to look at it and there were two and a half rows of stay bolts broken on one side.

Mr. WANGER. Please repeat that statement.

Mr. RUEFLY. A boiler maker came to me and asked me if I had seen the locomotive which had been blown up, and I said that I never had. He said that he would take me up to see it, and I saw two rows of stay bolts broken right on the hip of the boiler and two and one-half rows on the other side. Consequently the pressure coming at this point where the stay bolts were broken it just simply gave away and pulled the crown sheet down. The crown sheet was practically level. The flanges showed no sign of leakage. It simply collapsed on the side sheets and pulled the crown sheet down. The crown sheet runs across the top like that [indicating]. It was of the old type. They are not made at this time to any great extent; some few are made. The idea is this: The hip of the boiler comes down like that [indicating], and that makes this bar stiffer than on a smooth surface, and consequently in the case of expansion it would break the boiler where it is the stiffest on this side [indicating], and, as I say, two and one-half rows of the stay bolts were still sticking in the fire-box sheet. Gentlemen, suppose this [indicating] is the outside sheet. This is the inside of the fire-box sheet. This sheet [indicating] is naturally heavier than this. The bolt always breaks next to the outside [exhibiting] and the fire-box side becomes hotter than the outside. There is more expansion and contraction. Consequently it works this bolt right off here [indicating]. These bolts were sticking to this sheet [indicating].

The solid bolts, you understand, were sticking to this heavier sheet [indicating] and were bolted through this sheet. Of course there was nothing said in opposition to my statement about this particular thing.

Mr. WANGER. When was that case?

Mr. RUEFLY. In the early part of 1904.

Mr. WANGER. What was your occupation at that time?

Mr. RUEFLY. Boiler maker.

Mr. WANGER. In the navy-yard?

Mr. RUEFLY. No; at Roanoke, Va.

The CHAIRMAN. Connected with a railroad company?

Mr. RUEFLY. Yes, sir; at that time.

The CHAIRMAN. What railroad company?

Mr. RUEFLY. The Norfolk and Western Railroad Company.

The CHAIRMAN. Is that the road the explosion occurred on?

Mr. RUEFLY. Yes, sir. I also related before the Senate Committee on Interstate Commerce another case of a boiler inspector on the Norfolk and Western Railroad. He tested the stay bolts. You understand that they go into the fire box and hit each one of the bolts with a hammer, and from experience you can tell whether one of the bolts is broken entirely, but there is no man who can tell a fractured bolt. He might find one now and then, but it is a mere chance. I refer to this case with regard to engine No. 961.

Mr. TOWNSEND. Do I understand you to say that it would not be possible to find out about a fractured bolt?

Mr. RUEFLY. Not always; a man will find one once in a while.

Mr. TOWNSEND. Do you know of any method of inspection that is practicable that would find all the fractured bolts?

Mr. RUEFLY. Yes, sir; I do. The only method of finding fractured bolts is by the telltale hole, and when a bolt is broken it leaks there. Instead of taking the bolt out, the railroad company—sometimes it is done by the engineer on the road, because the steam escapes and obstructs his view; he takes a wire nail and plugs the hole, and when he comes in to the shop he reports it and then the boiler maker temporarily closes the hole until the engine is made available to do the work, until it can be taken off the run.

Now, as I stated before the Interstate Commerce Committee of the Senate, that was engine No. 961, although the Norfolk and Western Railroad officials claimed it was not and they showed reports that said I was mistaken and the reports did not show the number of bolts that I spoke of. I said there were 265 broken bolts taken out, but the inspector found but 60. We took the jacket off the locomotive and took the flues out in this particular case and made an external inspection and also an internal inspection and I think there were about 265 bolts that came out of that particular locomotive. There were only 60 bolts that he had found with a testing hammer.

Now, I do not know of any other means to remedy this unless there is a federal boiler-inspection law that will require the railroad companies to inspect the locomotives so often, to go right down in the locomotives and see if there is anything wrong. There has been a great deal of discussion in regard to how long it takes to make an inspection and some of the railroad officials claim that it will take from three to ten days to make a general inspection of a locomotive. The way the railroad companies inspect, it only takes about fifteen

minutes. They go over the bolts and turn in a report to the general foreman or the master mechanic, who turns it in to the superintendent of motive power. After a week or ten days they might get orders to take the bolts out of that particular engine. If the engine is not in the roundhouse, you have to wait until it comes in. Consequently the engine may be in a dangerous condition and still on the road. When the engine is ordered into the shop, if there is a special run to be made and there is no other engine available to make that run, they take the engine and send it back over the road and maybe it is a week or ten days or a month before that engine is repaired.

Mr. TOWNSEND. How extensive is that practice?

Mr. RUEFLY. It is followed on every railroad I have worked for.

Mr. TOWNSEND. How many have you worked for?

Mr. RUEFLY. That would be pretty hard to answer. I have a record in a civil service examination. I think I got 40 different references in regard to that examination. I passed that civil service examination.

The CHAIRMAN. We do not care anything about that.

Mr. RUEFLY. At an average percentage of 96.

Mr. WANGER. Do you not remember by what companies you have been employed in the last fifteen years?

Mr. RUEFLY. Yes, sir. I was employed by the Rock Island at one time. I have been employed by the Atlantic Coast Line, the Central of Georgia, the Chesapeake and Ohio, the Atlanta, Birmingham and Atlantic, the Alabama Great Southern, the Denver and Rio Grande, and various roads.

Mr. TOWNSEND. As a boiler inspector or boiler maker in all those cases?

Mr. RUEFLY. I have been boiler inspector only in a local way, you understand. I never was general boiler inspector for any company.

The CHAIRMAN. In what capacity were you employed by the companies?

Mr. RUEFLY. As a practical boiler maker.

Mr. WANGER. Was that employment in the boiler shops of the companies?

Mr. RUEFLY. Yes, sir.

Mr. WANGER. Or was it as inspector, witnessing the operation of engines?

Mr. RUEFLY. I was foreman for the Southern Road at Lawrenceville, Va., down here. There was one case down there where we had an explosion, but it did not happen to hurt anybody.

Mr. WANGER. When was that?

Mr. RUEFLY. In 1905, I believe it was. I remember the number of the engine very well, No. 805. This particular locomotive was an old type of what they called the mogul type, built in Richmond a great many years ago. There was nothing that you could see from an external view that was wrong with the locomotive, nor even by going into the fire box. It had one crown bolt leaking and it blew out. The engineer told me that the same bolt had given him some trouble for some time. He called me out of the roundhouse before he left Lawrenceville and asked me about it, and I told him it had been leaking for some time, it could not be repaired unless we took the bars off, and that it would require possibly three weeks to get to this particular bolt. The engine went out and the next morning at Frank-

lin, Va., in connection with another engine, it ran as a double header to Norfolk, and while this engine was standing at the water tank the bolt blew out right back of the flue sheet on the lower part of the boiler. There must have been a groove there caused by rust which settled in this lap [indicating], and when this reaction took place the strain came there [indicating] and the boiler was not strong enough to withstand the pressure. I believe that is about the same conclusion that the officials of the Southern Road came to. I was not called in. I formed my own opinion and I suppose they did the same thing.

Mr. WANGER. Would an inspection have revealed that weakness?

Mr. RUEFLY. Yes, sir.

Mr. WANGER. Why did you not discover it?

Mr. RUEFLY. There is no boss boiler maker in this country who can do as he would like to do. He gets his orders from the higher officials. I do not know anything about when was the last time the flues were taken out of this boiler and the dome cap taken off. I had been there eight or ten months and I know that nobody had been inside the boiler while I was there, and I do not think there had been anybody in the boiler for possibly three or four years before—I do not know.

Mr. BARTLETT. You worked on the Southern road?

Mr. RUEFLY. No, sir.

Mr. BARTLETT. At that time you were on the Southern road?

Mr. RUEFLY. Yes, sir.

Mr. BARTLETT. The Southern road and other similar larger roads have rules in reference to the inspection of boilers, regulating the inspection of boilers, periodical inspection?

Mr. RUEFLY. Yes, sir.

Mr. BARTLETT. Are not those rules generally carried out?

Mr. RUEFLY. No, sir.

Mr. BARTLETT. Whose fault is it that they are not carried out?

Mr. RUEFLY. I do not know, except the operating department.

Mr. BARTLETT. Either the operating department or the master mechanic?

Mr. RUEFLY. Yes, sir.

Mr. BARTLETT. I am very anxious to do anything for the safety of the employees and the public. Is it not the duty of the man who runs the engine to look out and to ascertain whether there is anything the matter with the boiler, and if he knows that the engine has not been inspected periodically or in accordance with the rules of the company, ought he not to call attention to the fact that it has not been inspected?

Mr. RUEFLY. The engineer on the road is running the engine over the road and if any defect comes to his knowledge when he gets to the roundhouse there is a report book and he reports.

Mr. BARTLETT. I have been around there and know all about that.

Mr. RUEFLY. He might report that the boiler be washed out and at the time that is done the stay bolts are supposed to be inspected, but the engineer never sees the stay bolts report. The engineer does not know how many stay bolts are broken or even the condition of the boiler.

Mr. BARTLETT. In a very celebrated case the Supreme Court of the United States decided that where an engineer called attention to the

fact that a stay bolt or any part of the engine was not in good order and the officials of the road sent him out and he was killed by reason of the defect he was not responsible, reversing the lower court of the State of Texas. It looks to me like those defects which are apparent or discoverable by the exercise of ordinary care and diligence by those who run the engines should be reported, and if reported they should either be attended to or if not attended to then the railroad assumes all the risk of danger and injury to the employees.

Mr. WANGER. What is done with the report of the inspector?

Mr. RUEFLY. It is sent to the superintendent of motive power, and he looks the report over, and if the engine is available he sends the engine back to have the bolts renewed; but it may be a week before they get a chance at the engine; consequently the locomotive is in service all that time, for a week or ten days, in a dangerous condition.

Mr. WANGER. The engine is not taken out of active use when the inspector may report that it is unfit for use; is that the case?

Mr. RUEFLY. Yes, sir. You see, the inspector is not exactly held responsible; he is supposed to do his duty. He can only inspect the locomotives when they come in.

The CHAIRMAN. How long since you have been employed by a railroad company?

Mr. RUEFLY. The last one was the Atlanta, Birmingham and Atlantic Company.

The CHAIRMAN. How long ago?

Mr. RUEFLY. I left there on the 1st of August.

The CHAIRMAN. Last August?

Mr. RUEFLY. Yes, sir.

The CHAIRMAN. Is that all?

Mr. RUEFLY. I would like to make a reply to the statement made by Mr. R. E. Smith.

Mr. WANGER. What is done with an engine when an inspection is made and it is found to be in a dangerous condition?

Mr. RUEFLY. Just as I told you before. I can not tell you any differently. If that engine is so that it can be taken off the road and there is another one to take its particular run, it is very often repaired, but otherwise it is neglected.

Mr. WANGER. No matter how bad the condition?

Mr. RUEFLY. No, sir. I have known engines to run with anywhere from 20 to 200 bolts broken and they never knew that there were so many broken bolts until there was an external or internal inspection.

Mr. TOWNSEND. I would like to ask you whether the inspectors employed by the railroads generally are competent to do the work?

Mr. RUEFLY. They are, if allowed to and given the time.

Mr. TOWNSEND. So the inspectors are generally competent to do the work?

Mr. RUEFLY. Yes, sir.

Mr. TOWNSEND. As I understood you, if I understood you correctly, what you want is a law compelling the railroads to have a more rigid inspection of the boilers?

Mr. RUEFLY. That is the idea exactly. What we want is external and internal inspection. An external inspection requires them to take the jacket off.

Mr. BARTLETT. How often in a year should there be an inspection in order to keep the engine in safe condition?

Mr. RUEFLY. Once a year for the external and internal inspection. The railroad companies should not discontinue their inspection. That should certainly be kept up. As I said, the reports should be turned in to the local government inspector, so that he can keep close tab and know the condition of every engine.

Mr. STEVENS. Could you give any estimate of the number of locomotives on the lines with which you are acquainted that are in bad condition?

Mr. RUEFLY. They are numerous. I would not like to make an estimate. Most every engine in the service to-day has some broken stay bolts right now, unless they have just come out of the locomotive shops.

Mr. KENNEDY. Does the kind of water they use make any difference as to how often an engine should be inspected?

Mr. RUEFLY. The water has not anything particular to do with the breaking of the stay bolts, I do not think.

Mr. KENNEDY. Does not the kind of water used materially affect the boilers?

Mr. RUEFLY. Yes, sir; there is good water and bad water.

Mr. KENNEDY. And that affects the question of how often a boiler should be inspected?

Mr. RUEFLY. Well, I do not think so. It has nothing to do with the broken stay bolts, braces, etc.

Mr. KENNEDY. Do you understand what it is that causes these stay bolts to break?

Mr. RUEFLY. Yes, sir.

Mr. KENNEDY. It is the action of the water in cutting them; that is what breaks them?

Mr. RUEFLY. No, sir; that is not it at all. It is just simply the expansion and contraction, the working of the fire box.

Mr. KENNEDY. That is the force. If they burn, they break. If they get coated with sediment, so that water can not get to them, they break.

Mr. RUEFLY. If mud gathers on this sheet [indicating] it will become mud-burned, and this sheet will peel right off.

Mr. KENNEDY. If you had distilled water in the boiler, then there would be less pressure on the stay bolts?

Mr. RUEFLY. With regard to the mud-burning we would; yes, sir; but not with regard to the breakage.

Mr. KENNEDY. Is it not an important factor in the matter of inspecting boilers, the water that is used?

Mr. RUEFLY. Of course, as I said before, there is bad water and good water. The Santa Fe has a good many softening plants along its line. They do not use the alkali water. Of course, that water was very hard on the flues, because it corroded them, but that would not necessarily break the bolts.

Mr. KENNEDY. I understand that. Now, in a bill of this kind when we fix exactly the things that a railroad company shall do by statute, saying how often they ought to inspect the boilers or anything of that kind, will not the railroad company say that "the law does not require us to do that" if we do not specify every single thing, and will not any attempt to direct how often the boilers shall be inspected be

a bad thing in place of a good thing? Do you not think that the railroads will use the law to say that no precaution ought to be exercised except the precaution which the law prescribes?

Mr. RUEFLY. I have read the bill and I would judge that it is complete.

Mr. KENNEDY. If we attempt to say the things that the railroad companies ought to do, will they not assume that anything that we have not specified that they should do they will excuse themselves from doing?

Mr. RUEFLY. I think if this law is complied with they will not have any excuse from anything. I think that covers it as completely as a bill could.

Mr. RICHARDSON. Your contention is not so much a complaint about the internal examination as the outside examination; that is what you are contending for?

Mr. RUEFLY. No, sir; I am contending for internal and external inspection.

Mr. RICHARDSON. Both?

Mr. RUEFLY. Yes, sir; once a year.

Mr. RICHARDSON. Can you tell us how many explosions there were on the line of railroad which you just left; for a year before you left?

Mr. BARTLETT. That is a new road which he left.

Mr. RICHARDSON. Mr. Bartlett says that that is a new road?

Mr. RUEFLY. Yes, sir.

Mr. RICHARDSON. How long had you been with it?

Mr. RUEFLY. From the 1st of April to the 1st of August.

Mr. RICHARDSON. Had any explosions taken place?

Mr. RUEFLY. No, sir; they were all brand-new locomotives, all in good condition.

Mr. RICHARDSON. No explosion had taken place?

Mr. RUEFLY. No, sir.

Mr. RICHARDSON. What is generally the cause of the explosion of a boiler; what is it attributable to?

Mr. RUEFLY. More to broken stay bolts than anything else.

Mr. RICHARDSON. Do you not think it is a fact, from absolute experience, that the explosions of boilers are ascertained to be attributable to the negligence of employees?

Mr. RUEFLY. No, sir.

Mr. RICHARDSON. And low water?

Mr. RUEFLY. Gentlemen, let me tell you one thing. I have myself seen two locomotives that were absolutely exploded by broken bolts.

Mr. RICHARDSON. That was in the course of how many years?

Mr. RUEFLY. Two in recent years, since 1900.

Mr. RICHARDSON. Are those the only two you have ever seen?

Mr. RUEFLY. I am talking of complete explosions. I have seen the engines burn.

Mr. RICHARDSON. Do you think that you can make any machinery that will absolutely provide against any kind of accident?

Mr. RUEFLY. Well, I believe that federal inspection would eliminate a great many accidents.

Mr. RICHARDSON. It would help, as a matter of course, but do you believe that anything can be made perfect by machinery?

Mr. RUEFLY. As I said before the Senate committee, of course there would be some explosions, but I believe it would eliminate at least 60 per cent.



Mr. BARTLETT. Eliminate to 60 per cent or eliminate 60 per cent?

Mr. RUEFLY. Sixty per cent.

Mr. BARTLETT. Eliminate 60 per cent of the explosions?

Mr. RUEFLY. Yes, sir.

Mr. RICHARDSON. You think that the railroad companies should increase the number of employees for the inspection of boilers? What you want is for the inspection to be more vigorous and more frequent?

Mr. RUEFLY. Of course, if the locomotives have been run down and not repaired under official inspection they would certainly have to have more employees and more boiler makers or else they would have to discontinue doing business. On the other hand, you take a railroad which is in good shape, good locomotives, and is having no trouble, I do not think it would affect them at all.

Mr. RICHARDSON. What is your observation as to the number of times the railroads have the boilers examined—monthly or yearly?

Mr. RUEFLY. Now?

Mr. RICHARDSON. Under the present practice without this bill.

Mr. RUEFLY. Some roads, the Norfolk and Western, are inspecting their stay bolts every ten days.

Mr. RICHARDSON. That is sufficient?

Mr. RUEFLY. Yes, sir; but that is not the idea. There is no boiler inspector who can tell all the broken bolts; that is, fractured and broken bolts. A fractured bolt will hold its load until it is broken, but it simply breaks quicker.

The CHAIRMAN. This witness has been all over this matter before, and while I do not wish to interrupt any member of the committee asking questions, this witness has occupied three-quarters of an hour; he is not connected with any railroad and was permitted only to take the stand for a few minutes. There are other gentlemen here who probably have real information on the subject whom, I think, the committee would prefer to hear.

#### **STATEMENT OF MR. H. E. WILLS, ASSISTANT GRAND CHIEF, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, CLEVELAND, OHIO.**

Mr. WILLS. I have a large portion of what I desire to say written, but I would like to make a few explanations as I go along.

One of the principal reasons why I am here is this: The last convention of the International Brotherhood of Locomotive Engineers passed a resolution requiring the grand chief engineer "To make every possible effort to have a law enacted by Congress requiring federal inspection of locomotive boilers on all railroads in the United States," and I am here under instructions to urge on behalf of 65,000 locomotive engineers, who are employed in the practical operation of locomotives in the United States, the enactment of a law that will prevent, so far as may be possible, the killing and injuring of people by so-called boiler explosions. I unhesitatingly state it can and should be done.

In my remarks I take the liberty of quoting from some things said some time ago before this committee.

First, I desire to direct your attention to the part of the proposed bill which requires the use of water glasses. They are necessary and advisable. They are an additional safeguard. From 85 to 95 per cent

of the railroads require them. All railroads which are humanely managed with care for the safety of their men require them. Efficient management, I might say capable management, takes advantage of the benefits to be derived from their use. These benefits are, first, the use of the water glass gives to the engineer at all times the knowledge of the water level in the boiler, when the water is level, and of the fluctuations when the water in the boiler is not level or at rest. This knowledge can not be accurately obtained in any other way. The gauge cock does not give it. Second, the engineer can get more efficient and economic operation and use of his engine when it is equipped with a water glass; third, it provides a greater confidence for the engineer to know from the water glass the exact situation of the water in the boiler; fourth, the only reliance upon a gauge cock is the sense of hearing. The engineer must be able, amid the din of the operation of the engine thundering along the road, to distinguish the difference in sound between escaping steam and escaping water, while with the water glass he may see at any moment by a glance the situation of the water in his boiler. Fifth, it is safer and more reliable under all circumstances to require the equipment of all locomotives with a water glass.

I will try to illustrate by stating what does occur and is not unusual in the operation of a locomotive.

In case an engineer should be placed in a position where he was obliged from any cause (and there are many) to temporarily favor the steam to the detriment of the water supply in the boiler—and that is no unusual occurrence, for when a boiler has been in use for a long time it usually has an accumulation of scale and mud—in order to keep a steam pressure necessary to make a meeting point with a superior train, or one having the right of track by direction. Such a condition often happens, and might be brought about by being stopped unexpectedly by an order board at some station where the train is not supposed to stop, or between stations, from accident to track or train. With a water glass in operation (and an experienced engineer can tell with no question of doubt whether it is or not) he can take every advantage, as all engineers are expected to do, and by a glance of the eye he knows just what he is doing so far as the water in the boiler is concerned. He can figure much closer on steam and time and secure better results than would be possible if he had to depend on the gauge cocks and give his attention to trying the cocks and catching the sound when he is required to give his undivided attention to the speed of his train in approaching this meeting point.

The CHAIRMAN. Right there your argument seems to be addressed not to the safety of the boilers, but to the superior advantage to the railroad company in its operations by reason of the glass.

Mr. WILLS. To a degree; yes, sir. My statement, to some extent, I am free to admit, is calculated to reach you gentlemen and influence you in regard to the same subject and statements that were made before the committee at a previous meeting. Perhaps it has an indirect bearing upon the whole case. I could submit much of this without reading it, although I should be very glad to have the gentlemen have an opportunity to question me concerning any statement I make.

Mr. KENNEDY. I would like to interrupt you right there. You speak about the difficulties of the engineer telling the level of the water by reason of the gauge cocks.

Mr. WILLS. Yes, sir.

Mr. KENNEDY. It may be water inside the boiler and when released it becomes steam?

Mr. WILLS. No. If there is water in the gauge cock water will escape.

Mr. KENNEDY. What is the difficulty in telling with the eye; it is just a question of fact, whether the height is high enough? When released it instantly becomes steam and comes out as steam?

Mr. WILLS. No; the gauge cock is usually situated to carry the steam or water into a dripper, so it will not fill the cab with steam.

Mr. KENNEDY. If a man had something else to look at, he might not be able to tell with his eye?

Mr. WILLS. If the escaping steam got into the cab it would obscure his view, and it goes into the dripper to be carried immediately away, and a man must listen to get the sound in that dripper between the escaping steam and water. It would become not only a source of annoyance but it would be unsafe to have the windows obstructed with the steam.

Mr. KENNEDY. I did not so understand it.

Mr. WILLS. I will be glad to make that plain.

Mr. ADAMSON. Does the average engineer operating these engines understand the mechanism and the operation of the boiler?

Mr. WILLS. Not the mechanism of the boiler; he fully understands the operation of it.

Mr. ADAMSON. Does he understand all the parts and the office of those parts?

Mr. WILLS. Not necessarily, not their construction, but he must understand the operation.

Mr. BARTLETT. He must rely upon some party who furnished the engine for its construction?

Mr. WILLS. If a boiler shows a leak, a locomotive engineer must understand and does understand whether that leak means danger or not, but to just what degree no man can tell.

Mr. ADAMSON. Does he know enough usually to recognize an item of unsafety to the boiler?

Mr. WILLS. He certainly does.

Mr. ADAMSON. Does he ordinarily know as much as the average inspector as to the inspecting of engines?

Mr. WILLS. He does not have the same opportunity. We do not claim that he does know, because his time has not been given to inspecting boilers. He does not have the same opportunity as an inspector.

Mr. RICHARDSON. Does he know when the boiler is getting in a dangerous condition?

Mr. WILLS. It depends on what it is.

Mr. RICHARDSON. It would depend on the circumstances?

Mr. WILLS. A locomotive engineer who had operated a boiler would know quicker and be a better judge of whether or not it was dangerous than some man who had had no experience.

Mr. ADAMSON. I would like to ask whether it would be possible to utilize the services of the engineer himself—it might elevate his standing a little and increase his information and efficiency a little—would it be possible to utilize his services as an inspector on each engine? It would seem to me that would afford a solution.

Mr. WILLS. I think I can speak advisedly for over 60 per cent of the locomotive engineers employed in the active operation of locomotives in the United States. We would prefer to have an experienced boiler maker and repairer as inspector of our boilers. I say "our boilers" because we operate them.

The CHAIRMAN. I take it your position is that, so far as those things are concerned that are apparent in the operation of the engine, the locomotive engineer is as well qualified as anybody, but those things which appear upon examination that are not apparent from the operation of the engine require the services of an expert boiler maker?

Mr. WILLS. Mr. Chairman, I believe that is substantially correct; but here is the engineer's position, in reply to you and these gentlemen: The average engineer to-day has not control over the boiler or the locomotive that he runs, as a rule, and when he is called to go out he takes whatever is given to him, and he goes on that engine and goes to the other end, and reports there any defect that he may notice.

Mr. ADAMSON. It would be impracticable to make him an inspector?

Mr. WILLS. In the majority of cases the average engineer, I believe, would not be as well qualified for an inspector of boilers as a practical boiler maker.

Mr. ADAMSON. If he were, it would be impracticable under the conditions you have just spoken of—that he is liable to be taken off and put on another engine?

Mr. WILLS. Yes, sir. I do not think it would bring about good results, the desired results, to require an engineer who operates an engine to be responsible for all defects in connection with the boiler.

Mr. ADAMSON. He certainly would give himself the benefit of the doubt?

Mr. WILLS. Yes, sir.

Mr. RICHARDSON. You want to get up a bureau and have the Government appoint about 1,200 different officers?

Mr. WILLS. No, sir. I will cover the whole ground. The statement may be a little lengthy.

Mr. RICHARDSON. You do want the Government to appoint these men?

Mr. WILLS. Certainly.

Mr. RICHARDSON. About how many inspectors?

Mr. WILLS. About two or three hundred.

It might be upgrade, where the locomotive must be worked to its full capacity to within a short distance of where he must come to a stop; or it might be down grade and around sharp curves, where it would not do for him to miss applying the brakes at the proper moment. It may be foggy and the rails slippery, and he must know by his watch, and not by guess, that he does not infringe one-half minute on the time that belongs to the other train. If the weather is cold, steam from the gauge cocks, if used, causes frost to gather on the windows, and in warm weather fog will gather on the front window, and no engineer can keep his head out of the side window of a locomotive cab and at the same time open and close a gauge cock and listen to the sound of escaping steam or water from the same; and he needs his hands to handle the throttle, sand appliances, air-brake valve, and perhaps the reverse lever.

I don't hesitate to say that it is absolutely more reliable and safer under any and all circumstances to trust to the water glass than the gauge cocks, but although either can be used without the other I consider both a necessity. I wish to state positively that water in a glass connected at top and bottom with a boiler, so as to show the position of the water in the boiler, with a steam pressure of say 40 or 50 pounds or more, the water in the glass will be constantly and perceptibly moving, any statement to the contrary notwithstanding, whereas if the top cock is closed, the water will move up and out of sight. If bottom cock is closed, line will not change unless the water in the boiler should go above the opening in the top cock. Water-glass cocks are all provided with a means of blowing out in case one should show indications of not working properly. Locomotives can be operated without water glasses, with the usual three gauge cocks about three inches apart, and if one, from any cause, gets stopped up, which they often do, with no water glass, an engineer is, to some extent, between "His royal highness and the deep blue sea." He must not let it go above the top cock, and he dare not let it go below the bottom one of the two in use, and when it is between the two, he must guess where.

There are many reasons, when detailed, why we desire to have a federal inspection of boilers, but I believe I can say the principal one is that there has been 265 persons reported by the railroad companies as having been killed, and 3,656 as having been injured, during the five years between July, 1904, and June, 1909, by locomotive boiler explosions, and I desire to show you gentlemen how those reports read; and I blush when I read them, not for the engineers, but for the men who make those reports and expect people to believe that men who are employed and supposed to be capable of filling the responsible position of a locomotive engineer, knowing full well the result, will sit on a seat in a locomotive cab and take the lives of others and commit suicide himself. They are as follows [reads]:

**TYPICAL CASES FROM THE ACCIDENT REPORTS RENDERED TO THE INTERSTATE COMMERCE COMMISSION, ILLUSTRATING THE NEED FOR BOILER INSPECTION.**

- (1) Crown sheet blew out, causing injury to two persons. Cause given as low water.
- (2) Boiler explosion, killing one person and injuring one. Cause given as low water.
- (3) Boiler explosion, killing two persons and injuring three. Cause given as low water.
- (4) Crown sheet dropped, killing one person and injuring one. Cause reported as low water.

MR. KNOWLAND. No inspection would have prevented that?

MR. WILLS. I take the position that proper inspection will prevent from 70 to 90 per cent and then the work properly done after that. The inspection alone will not do it.

MR. TOWNSEND. You take the position that those reports are not faithful; that it was not due to low water?

MR. WILLS. That is my opinion, and I speak not as a college graduate from a law school; not as having been associated in this Capitol building with the high officials who make our laws; I speak not as a Senator or attorney; I speak not as a railway manager; I speak as a practical locomotive engineer with thirty-seven years' experience in the operation of a locomotive.

Mr. ADAMSON. If you have federal inspection of the boilers, would it not be equally advisable to let the inspection cover the operators?

Mr. WILLS. I have no objection to anything that will bring about the desired result and prevent the loss of life. I would have no objection to having the railroad managers examined. I would have no objection to having the superintendents of motive power, the train dispatchers, and all other officials of the railroads examined in order that the public may know that they are qualified to fill the positions they occupy. I have no objection to the examination of the steamboat engineers or the locomotive engineers, if it is thought advisable.

Mr. RICHARDSON. Within what period did those accidents occur?

Mr. WILLS. Five years, as shown by table "Boiler explosions during the period July, 1909, to June, 1909, inclusive."

Mr. KNOWLAND. Your contention is that the report is inaccurate?

Mr. WILLS. Most assuredly. I say that we frankly blush for the men who make the report.

Mr. WANGER. Have you any personal knowledge of the cases reported?

Mr. WILLS. I make no criticism of the individual cases. I can make them up and bring them here, if it is desirable. I speak for those who I say are practically unanimous in their desire to have this protection thrown around them. I felt that it would do, and that it would not be necessary for me to bring here specific cases and to go into the details of condemning any one particular railroad or any one railroad official. There are many of the roads to-day that are giving proper inspection to their boilers. Some of the roads that give thorough inspection find it inconvenient at times to do the work that is necessary after reports have been made, and we will undertake to show you so plainly that you can not help but understand before we are through with this hearing.

Mr. RICHARDSON. You challenge the truth of the reports made in that way?

Mr. WILLS. Generally speaking, I do.

Mr. RICHARDSON. You base it simply on the statement made to this committee that these gentlemen are asking for more protection. That is the reason that you have given. What other reasons are there?

Mr. WILLS. I have many; I can bring them here. Let me tell you why—

Mr. RICHARDSON. If you make that charge before this committee, you should be prepared to furnish the information.

Mr. WILLS. If you want to force me to make the charge, perhaps you can succeed.

Mr. RICHARDSON. I think anybody who makes a charge against the integrity of a report ought to be prepared to submit the facts that he has based the charge on.

Mr. WILLS. When I say that I blush for the people who make the report, is that a formal charge?

Mr. RICHARDSON. No, sir.

Mr. WILLS. If you draw out of me by force and force me to make a formal charge, I can bring them here. I will tell you why I do not want to make a charge. I have had them in my possession for three months, ever since I came to Washington. I can bring them here, but the men whose names are signed to them I shall expect to be dismissed from the railroads for the very first excuse the railroads can

get for doing so. I do not want to have the men dismissed. I can show you letters saying, "Use this letter, but do not use my name."

MR. RICHARDSON. My judgment right there is that your highest and most patriotic duty is to the country, and if there are any men doing business in that way in this country they should be exposed.

MR. WILLS. I am not looking to get a whole lot of employees discharged.

MR. KENNEDY. What is your individual experience as to water being permitted to get low?

MR. WILLS. I deal with all that in my statement, if the gentleman cares to follow me.

MR. SIMS. I make the request that the gentleman be permitted to finish his statement.

The CHAIRMAN. Proceed, Mr. Wills.

MR. WILLS. I assume that my statement is, to some extent, intended as a reply to the former hearing.

No. 23, as I have numbered each one of the accidents:

Flue bursted, causing explosion in fire box, which blew out ash pan, killing 1 person. The report states that investigation showed that explosion was due to low water on the crown sheet, resulting in the heads of 9 bolts pulling out, allowing sheet to drop 1 inch. Engineer held responsible.

To a practical man, a boiler maker, a report of that kind is actually absurd and ridiculous. If you gentlemen care to take the time to study that, you would appreciate it. There are something like 46 or 48 accidents given as due to low water, and the total number is 79 of so-called boiler explosions.

MR. BARTLETT. If the boiler was strong and stout and the bolts were already in place and held, instead of tearing the bolts out, it would tear out the metal?

MR. WILLS. Not always. A crown sheet may become burned by the lack of water, and when it gets to a white heat it softens the metal. It pulls down and simply tears out, and it is not what might be called an explosion.

MR. BARTLETT. You did not understand my question. I mean to say that if the stay bolts and everything was in good shape and an explosion occurred by reason of low water, the water getting low, by turning in the cold water, instead of pulling out the bolts, it would affect the metal?

MR. WILLS. I want to say there have been many tests and it has been shown that the cold water does not explode them.

MR. RICHARDSON. That number of cases covers a period of five years?

MR. WILLS. Yes, sir.

MR. RICHARDSON. What territory did those 79 cases cover, all the United States?

MR. WILLS. Yes, sir.

MR. RICHARDSON. How many miles of railroad are there, something like 230,000?

MR. WILLS. Yes, sir.

MR. RICHARDSON. That is an average of how many cases a year?

MR. WILLS. I do not know how many more explosions there were that have not been reported. These are the cases reported to the Interstate Commerce Commission simply.

Mr. RICHARDSON. What is the average number of explosions, according to your statement?

Mr. WILLS. I have not figured that out.

Mr. RICHARDSON. I thought you were a quick mathematician and could tell us?

Mr. WILLS. No, I am not a mathematician; I am a practical locomotive engineer.

Mr. WANGER. Proceed with your statement.

Mr. WILLS (reads):

5. Crown sheet dropped, killing 1 person and injuring 1. Cause given as low water.  
6. Crown sheet dropped, killing 2 persons and injuring 1. Report states that investigation made by 2 disinterested boiler inspectors indicated that accident was due to low water.

7. Crown sheet dropped, injuring 3 persons. Cause stated to be due to low water.

8. Crown bolts pulled through the sheet, allowing water and steam to escape into the fire box, badly scalding 2 persons. The accident said to be due to low water.

9. Boiler exploded, killing 1 person and injuring 1. Said to be caused by low water.

10. Boiler exploded, killing 2 persons and injuring 6. Said to be due to low water.

11. Crown sheet dropped down on one side of fire box. Crown bolts pulled off and six radial stays pulled through sheet. One persons killed. Said to be caused by low water.

12. Crown sheet dropped, resulting in boiler explosion. Two persons injured. Cause stated as low water.

13. Crown sheet dropped, killing 1 person and injuring 1. Cause stated as low water.

14. Crown sheet dropped, injuring 2 persons. Cause stated as low water.

15. Crown sheet dropped, killing 1 person. Cause stated to be due to low water.

16. Crown sheet dropped, injuring 1 person. Said to be due to low water.

17. Crown sheet dropped, causing boiler to explode, killing 1 person. Cause given as low water.

18. Crown sheet dropped, causing boiler to explode, killing 1 person. Cause given as low water.

19. Boiler exploded, killing 3 persons and injuring 2. Cause stated to be low water in the boiler, due to neglect of engineer.

20. Boiler exploded. Cause stated to be low water. Two persons injured.

21. Boiler exploded, injuring 1 person. Cause stated to be low water, due to neglect of engineman.

22. Crown sheet dropped, injuring 2 persons. Cause stated to be low water.

23. Flue bursted, causing explosion in fire box which blew out ash pan, killing 1 person. Report states that investigation showed that explosion was due to low water on the crown sheet, resulting in the heads of 9 bolts pulling out allowing sheet to drop 1 inch. Engineer held responsible.

24. Crown sheet dropped, injuring 1 person. Cause stated to be low water, due to neglect of engineer.

25. Boiler exploded, injuring 3 persons. Cause stated to be carelessness on the part of the engineer in allowing water to become low in the boiler.

26. Crown sheet dropped, injuring 2 men. Accident supposed to be caused by low water.

27. Boiler exploded, killing 2 persons. Cause stated to be low water.

28. Crown sheet dropped, killing 1 person and injuring 1. Cause stated to be low water in boiler, due to carelessness of engineer.

29. Crown sheet dropped, injuring 4 persons. Cause stated to be low water in boiler. Engineer held responsible and dismissed from the service.

30. Crown sheet dropped, injuring 3 persons. Cause stated to be low water. Engineer held responsible.

31. Crown sheet dropped, injuring 3 persons. Said to be due to low water. Engineer held responsible.

32. Crown sheet dropped, injuring 1 person. Said to be due to low water. Engineer held responsible.

33. Boiler exploded, killing 2 persons. Said to be due to low water.

34. Boiler exploded, killing 4 persons and injuring 1. Said to be caused by low water. Engineer held responsible.

35. Boiler exploded, killing 1 person and injuring 4. The report states that an investigation showed conclusively that the accident was caused by neglect of the engineer in allowing water to get too low in the boiler.



36. Boiler exploded, killing 3 persons and injuring 1. Cause stated as shortage of water in boiler.
37. Crown sheet dropped, killing 1 person. Cause stated to be low water.
38. Boiler exploded, killing 2 persons. Cause stated to be low water.
40. Boiler exploded, killing 2 persons and injuring 1. Report stated that it was supposed explosion was due to low water.
41. Boiler exploded, killing 3 persons. Cause stated to be low water.
42. Boiler exploded, killing 1 person and injuring 1. Cause stated to be low water.
43. Crown sheet dropped, injuring 2 persons. Report states that accident is supposed to have been due to low water.
44. Crown sheet dropped, killing 1 person and injuring 1. Said to be caused by low water. Engineer held responsible.
45. Rivet in corner of fire box pulled out, allowing hot water to drop into the fire box, causing steam to rush out through fire-box door, badly scalding fireman. Report states that engine was properly inspected before going out into train and was found to be in good condition. Accident said to be unavoidable.
46. Washout plug blew out of boiler, injuring 1 person. Report states that plug was in good condition, but apparently had not been properly put in.
47. Plug blew out of front end of flue sheet, killing fireman. Report states that deputy coroner rendered a verdict exonerating the railway company and its employees from all blame.
48. Arch pipe bursted, killing 1 person and injuring 1.
49. Arch pipe bursted, killing 1 person.
50. Arch pipe bursted, scalding fireman so badly that he died two days later.
51. Crown sheet dropped out of engine, causing explosion, killing 1 person. No cause was stated.
52. Boiler exploded, injuring 1 person, at front end of wagon top just front of sand-box, breaking engine in two. Report states that cause of this explosion is not known. The boiler of engine was apparently in good condition. The master mechanic stated that it might have been the result of crystalization of sheet, causing break between rivets. The boiler was thought to be in sound condition.
53. Boiler exploded, injuring 1 person. Report states that no defect in boiler was found.
54. Crown sheet dropped, injuring 1 person. No cause stated.
55. Side sheet of fire box fell away from stay bolts, causing explosion which badly scalded the fireman. Report states that boiler was inspected ten days previously and found in A 1 condition.
56. Crown sheet dropped, injuring 1 person. Accident said to be caused by scale said to have been found on top of crown sheet.
57. Arch flue blew out of flue sheet, badly scalding fireman. Report states that cause of accident is unknown.
58. Arch flue blew out, badly injuring fireman. No cause given.
59. Stud bolt supporting grate of fire box flew out, badly scalding fireman. Report states that fire box was inspected two days before, at which time the stud bolt showed no evidence of leaking.
60. Twenty or 25 crown bolts gave way, allowing steam to escape into fire box, badly scalding fireman. No cause for the accident stated.
61. Arch-pipe plug blew out, badly injuring fireman. Report states that engine was apparently in good order leaving the terminal.
62. Crown bolts pulled out, allowing sheet to fall, and 3 persons were badly scalded in consequence. No cause for the accident was stated.
63. Crown sheet dropped, injuring 1 person. Report states that accident was unavoidable.
64. Arch pipe burst, injuring 3 persons. Report states that the mechanical department said there was no defects in the flue.
65. Arch-pipe plug blew out of crown sheet, injuring 1 person. Report states that engine was thoroughly inspected at terminal the evening before and was found in good condition.
66. Dome cap of engine blew off, injuring 1 person. No cause given for accident.
67. Arch plug blew out of flue sheet, badly scalding 1 person. No cause stated.
68. Crown and side sheets in fire box blew out, injuring 1 person. No cause given.
69. Boiler exploded, killing 1 person and injuring 9. Report states that an investigation failed to develop cause of explosion. Engine was carrying only 140 pounds of steam at the time and was rated at 155. No indication of low water.
70. Crown sheet blew out, injuring 4 persons. Report states that engineer admitted responsibility for the accident.
71. Arch bar bursted, injuring 2 persons. No cause for the accident stated.

72. Crown sheet dropped, injuring 1 person. No cause stated.  
 73. Crown sheet dropped, injuring 1 person. No cause stated.  
 74. Crown sheet dropped, injuring 1 person. No cause given.  
 75. Crown sheet dropped, injuring 2 persons. No cause stated.  
 76. Washout plug blew out, killing 2 persons and injuring 3. The report of the accident states that the boiler maker who was killed was responsible for this accident, on account of attempting to tighten a loose washout plug when steam pressure was on boiler.  
 77. Arch flue exploded, injuring 1 person. No cause for the accident stated.  
 78. Crown sheet dropped, causing explosion and killing 1 person. No cause given.  
 79. Crown sheet dropped, killing 2 persons. Report states that an investigation developed that the engineer was responsible for the accident and that he was suspended for thirty days. Just in what manner he was responsible is not stated, and no cause for the accident other than this statement is given.

As to the necessity for government inspection of locomotive boilers, there are many reasons which tend to show the imperative necessity for such inspection.

First. The deaths and injuries from locomotive boiler explosions, as shown by the following table which gives the appalling casualties:

*Boiler explosions during the period July, 1904, to June, 1909, inclusive.*

Time.	Trainmen.		Other employees.		Total employees.		Other persons.		Grand total.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
July, 1904, to June, 1905.....	38	564	10	53	48	617	.....	8	48	635
July, 1905, to June, 1906.....	45	610	1	41	46	651	.....	1	46	652
July, 1906, to June, 1907.....	70	768	7	67	77	835	.....	6	77	841
July, 1907, to June, 1908.....	54	767	4	56	58	823	.....	3	58	826
July, 1908, to June, 1909.....	53	655	3	55	56	710	.....	2	56	712
Total.....	240	3,364	25	272	265	3,636	.....	20	265	3,656

These figures indicate that government action is necessary. They plead eloquently for an effective remedy. No words of mine can influence you if these startling figures do not touch your hearts and affect favorably your intelligent judgment.

I have previously called your attention to the details of the reports of such explosions made to the Interstate Commerce Commission.

The expense of such inspection should not be a barrier to its enactment, when the gravity of the danger to the lives of so many brave men is considered. Human life is of more importance in our country than the necessary expenditure to prevent its sacrifice. No reasonable expense should be spared to prevent the needless killing of men in a useful calling, or to prevent the fearful torture which results from the scalding of such daring men as man the cabs of our locomotive engines.

The inconvenience to the railroad itself by taking out of service for a few hours the engine while inspection is being made is too trivial to be considered or seriously urged, when the gravity of the wrong sought to be remedied by this bill is borne in mind.

The prevalence of the accidents from locomotive boiler explosions indicates the necessity for legislation which will compel the installation of such safeguards as shall prove an effectual preventative.

Mr. BARTLETT. Would the placing of this duty of inspecting locomotive engines and boilers under the Steamboat-Inspection Service answer the purpose of the bill?

Mr. WILLS. That has been discussed to a great extent, and it has been thought by those best qualified to judge—at least that is my opinion—that it would be better to place it where the bill provides. That is a matter which has been discussed with General Uhler, who is in charge of the Steamboat-Inspection Service.

The railroads have not, when left without regulation upon this subject, proven to have exercised that degree of care in preventing these accidents that the gravity of the situation calls for.

It should be noted here that heretofore such deaths and injuries as have occurred from the causes we are now considering have not been of such a nature generally as to call upon the railroads for compensation to the widows and orphans of the killed or to the injured railroad operators themselves.

And while upon this subject, permit me to say that it would be a wise and efficacious method of enforcing a degree of zeal on the part of the railroads to prevent such accidents if a section was added to the bill that in all cases of such death or injury in the cab of a locomotive from explosion or scalding, when the railroads and the man are properly subject to federal regulation, an unconditional right to recover for such deaths and injuries should be given to the man, or, in case of his death, to his dependents.

Mr. BARTLETT. What do you mean by that, that the railroads should have no defense?

Mr. WILLS. When properly regulated by the Government, we say that we believe it would not be a bad idea to add to the bill that they should have the unconditional right to recover.

Mr. RICHARDSON. What do you consider proper regulation?

Mr. WILLS. It would take me considerable time to answer that question. I have not had the time nor the inclination to figure it out.

Mr. RICHARDSON. It is an important matter. The Government should put the employees on a certain basis if that is done. I just wanted to know what you considered proper regulation.

Mr. WILLS. I would have to digress a long way from my argument.

Mr. WANGER. Have you finished your statement?

Mr. WILLS. No, sir.

The CHAIRMAN. Proceed.

Mr. WILLS. We realize the necessity of having locomotive boilers made as compact as possible, and I think it safe to say that no other metal of the same heft demonstrates the ability to generate the power and go with the machinery that uses it from place to place at such, I may say, frightful speed as that with which our passenger traffic is handled, to say nothing about the heavy freight traffic that is daily moved from place to place at a less rate of speed, and I am sure that we will all agree that those boilers should be built of the best material obtainable, and every precaution that up-to-date scientific and practical knowledge gives should be used in their construction. I am ready to agree that in most cases this is being done, with a view, of course, of getting the best possible financial results for the bondholders of the property, and no one need deny that the railroad official is selected with a view of "getting results."

The boiler is constructed with as much heating surface as is thought to be possible for practical use, and for the size of the same, and, we believe, oftentimes to the detriment of the water space above the crown sheet and flues. One of the reasons why the use of fusible plugs was discontinued was because in the ordinary operation of the locomotive the soft metal would melt out when there was plenty of water in the boiler, but not in its proper place, as I will show. It is well known to all who travel that with the present up-to-date braking appliance, and the speed with which our trains are operated, they are stopped in such a way that a person standing in the back of a car will go to the front if he doesn't put forth power to resist. Now, the water in a boiler does exactly the same thing, and there being nothing to resist only the nature of water to find its own level under still conditions, the water fills the front end of the boiler, and the crown sheet of nearly every locomotive, at a large percentage of the stops that are made, is without water for a short space of time, and for the reason heretofore explained; and for the same reason fusible plugs are not as much of a success as they were before the use of our present brake equipment. I believe it to be an acknowledged fact that locomotives subjected to the treatment that prevents the successful use of the fusible plugs will in time have weakened crown sheets, and also the back end of the top rows of flues, so far as they are from time to time exposed to the heat of the fire box when water is temporarily absent, and the time comes when the stay bolts pull through and the crown sheet comes down, and you have the result that causes the record as reported to the Interstate Commerce Commission.

The railway officials who have charge of repairs on locomotive boilers are not liable to replace the crown sheet because it has, to some extent, been weakened by heat on account of temporary absence of water when there are only slight leaks to show it. If complaint is made by an engineer it may be said to him: "If you don't want to run that locomotive there are other men who do." I have known men being discharged because they declined to go out on a locomotive when the boiler was in a bad condition; and in one case where they had four men off for having had "burned engines," or as it was put: "We found you with the goods on you." In other words, you were running the engine when it happened.

It must be borne in mind that it is only cases where death or injury results that are reported. We don't deny that men who run locomotives are human, and as such, do make mistakes, but no one knows better than they the danger of low water in a boiler, and it was said by an official of high standing in discussing this subject before the House committee:

Some of our most experienced and most reliable engineers were getting caught once in a while—perhaps one out of three of our best men would get caught once in a lifetime—and when they once were caught, "found with the goods on them," it was then a clear case: They must stand convicted or some one else must be blamed for having allowed the engine to be run in that condition. The master mechanic is the one, in most cases, who decides, and the judge and the jury will naturally acquit themselves. The engineer is discharged, and does well if he gets back, but if he confesses that he did it, he may be returned; or, perhaps, if he had a good previous record, for a long term of years, he may be returned with a loss of from sixty to ninety days off without pay.

I wish to quote from a well-known and highly respected man who spoke on this subject before the House committee:

The question has been referred to me as to why our engineers allow the water to get too low, and there have been several explanations. Some of them no doubt were correct, but they did not cover all of the explanations as I have had them. Some years ago, due to the fact that we found in our investigations of these low-water cases that some of our most experienced and most reliable engineers were getting caught once in a while—perhaps one out of three of our best men would get caught once in a lifetime—the thought occurred to us, was it good policy to follow out the plan or policy that was then in vogue of discharging these men who were caught in that way. Our rule was that if a man once allowed the water in his boiler to get low, so far as employment with that company was concerned, he had no hereafter; he was discharged, and that was the end of it. We withdrew that policy from our management and took this position, that if the engineer would come to us and tell us in a way that it was reasonably apparent that he was telling us the truth, just how this happened, or his version of how it happened, and there was some truth in that, we would return that man to service without loss of time, making a record against him and that the second offense would mean dismissal from the service.

Now, I desire to ask if you can see any inducements offered to an engineer to acknowledge that he did it. The conditions spoken of are in vogue on many roads, but I believe if locomotive boilers were properly inspected four times a year, but few "burned boilers" would be found by explosions or by the inspector, for the ounce of prevention would be used by the railway companies and it would cost much money, and that is, in my opinion, the cause of all this opposition against what we all agree we should have, to wit, thorough boiler inspection. I say, let the placing of the responsibility for the killing and injuring of people come from an impartial authority, and that will put it where it belongs and reduce it to a minimum.

Mr. BARTLETT. May I interrupt you?

Mr. WILLS. Certainly.

Mr. BARTLETT. Suppose this committee and Congress proceeds to enact a law for government inspection; how would that affect the liability of the railroad in case the boiler should explode when it had been reported in good condition by the government inspector when it was not in good condition? Have you considered that?

Mr. WILLS. Not to any great extent; no, sir.

I desire to further quote from statements made before the House committee, as follows:

We withdrew that policy from our management and took the position that if the engineer would come to us and tell us in a way that it was reasonably apparent that he was telling us the truth just how this happened, or his version of how it happened, and there was some reason in that, we would return the man to service without loss of time.

Most railway employees know that some one has to be responsible when an accident happens on a railway. Now, if this engineer is willing to take the responsibility he is acquitted and returned to work without loss of time. What we want is that an impartial investigation shall put the responsibility where it belongs. If locomotive engineers can not be taught to protect themselves, but are so careless by nature, education, or some other cause that they "burn" their locomotive boilers and practically commit suicide, often leaving widows and children for some one else to care for, then, I say, let us know it, and let the strong arm of our Federal Government protect them and the public from present conditions.

On some of our roads there is a minimum limit of mileage that engines are expected to make before going into the shop for repairs, and in order to have some engines make this mileage they are crowded, and slight or temporary repairs are often made, and sometimes when permanent repairs should be made, such as are "burned," from causes as heretofore explained by me, or overheated from any cause, or mud burned, or cracked crown sheet, or both, and the same with side sheets, flue sheets, or throat sheets. Later, that which causes the slight or temporary repairs may cause what is known as "low water burned engines," and the man in charge, who will be condemned, has nothing to do with selecting the judge or jury who decides his case.

In all that has been said in opposition to this proposed measure, so far as I know, all have agreed that boiler inspection is a necessity, and none have claimed that a government inspection will increase the cost to the railway companies, only so far as it will take from their service the use of the locomotive from "three to ten days each three months" (as they state it), in order to carry out what is also claimed by some would be a "superficial examination." Much stress is put on the enormous amount of money it would cost the Government if government inspection should become a law. In my opinion, an inspection could be thoroughly made by an inspector, with such assistance that could and should be given by the railway companies' regular force, and with slight, if any, additional cost to them, so far as the inspection is concerned (but it may cost more for repairs), at the average rate of three locomotives daily. I mean a "thorough" and not a "superficial" inspection, and I am sure that in time it would be shown to be among the most humane acts of our National Congress, such as the safety-appliance law, which was so strenuously opposed by some.

I have a petition which I will not take time to read.

Mr. BARTLETT. File it.

Mr. WILLS. I shall be glad to do so.

(The petition referred to follows:)

RESOLUTION ADOPTED BY THE LOCOMOTIVE ENGINEERS' GENERAL COMMITTEE  
OF ADJUSTMENT, BALTIMORE, MD., FEBRUARY 10, 1910.

We, the general committee of adjustment of the Baltimore and Ohio Railroad system in convention assembled, and representing over 2,400 locomotive engineers in active service, do most heartily indorse and support a bill for the proper inspection of locomotive boilers, believing such careful inspection necessary for the safety and health of locomotive engineers and firemen and the welfare of the public.

We are in favor of water glasses and other standard appurtenances on locomotives that may contribute to efficiency of operation of boilers, the safety of the engineers and firemen, and also the preservation of their health from the continual inhaling of steam, the saturation of their clothing by dampness while on duty from leaking gauge cocks, broken stay bolts, and other defects, and leaks about the boiler and the danger from valves and other fixtures, and piping insecurely fastened, improperly constructed or placed; besides the obstructing of view by leaking steam, making it very difficult to observe signals and greatly increasing the danger to the employees and the public.

We are also desirous that such bill be framed to include a reasonable protection to locomotive engineers from loss of their positions for alleged damage to locomotive boilers by low water when such damage might have been avoided by proper design of boiler and suitable appliances provided for safe operation of boiler, proper washing

out, and care, or the providing of water suitable for use in boilers under the trying conditions of railway service.

W. W. Puckett, Newark, Ohio; F. W. Warner, Cleveland, Ohio; W. R. Wadsworth, Connellsville, Pa.; F. Fulk, Garrett, Ind.; H. A. Eddy, Lorain, Ohio; C. R. Spaulding, Painsville, Ohio; J. W. Smith, Cumberland, Md.; Henry Malone, McMechen, W. Va.; W. E. Evans, Brunswick, Md.; Don C. Smith, Chicago Junction, Ohio; J. L. Shriver, Newcastle, Pa.; Raymond Malone, Weston, W. Va.; B. R. Stull, Baltimore, Md.; B. V. Barnard, Grafton, W. Va.; J. E. McAvoy, Foxburg, Pa.; Jerry Collett, Philadelphia, Pa.; J. J. Clair, Pittsburg, Pa.; Geo. N. Cupp, Mars, Pa.; F. A. Edwards, Parkersburg, W. Va.; E. F. Augustine, Chicago, Ill.; J. B. Liggett, Bridgeport, Ohio; James Dennison, chairman; J. J. Clair, secretary.

THE RALEIGH,  
Washington, D. C., February 14, 1910.

The Locomotive Engineers' Mutual Life and Accident Association has paid for deaths caused by locomotive-boiler explosions as follows:

Death.		Death.	
1900.....	2	1906.....	7
1901.....	4	1907.....	18
1902.....	12	1908.....	12
1903.....	7	1909.....	11
1904.....	6		
1905.....	9	Total ten years.....	88

This number comes from those who are carrying our insurance, and that does not include the entire membership. I have not the data at hand from which to furnish figures showing the membership in our insurance department previous to 1907, but in that year there were 49,654; in the year 1908, 55,023, and 1909, 56,463. The members of our insurance association can carry one, two, or three policies each for \$1,500. A large per cent of our members carry \$4,500 insurance. There are many who carry a single \$1,500 policy. Figuring the loss in deaths in our insurance department, due solely to hot water and steam coming from so-called "burned" engines, account of low water," on an average of \$3,000 it will show that our insurance department has paid during the past ten years \$264,000.

I do not refer to this as being of any importance as compared to the loss of life and the injuries caused by these boiler explosions.

H. E. WILLS,  
Asst. G. C. E. B. of L. E.

Mr. WILLS. Along the same lines I would like to suggest the following: The making of regulations as to when these tests should be made is a matter that will be with the locomotive boiler-inspection board, and should and no doubt will be so made as to carry out the law and its intent, and with the least possible amount of inconvenience to the railway companies. The "thorough external and internal personal examination" should be made while the flues are out and the jacket and lagging are off, and would be a matter of from two to four hours to make this examination. This would include the test of stay bolts, because if not all of them nearly all of them could be seen, and the hammer test would not be necessary on but few, if any. The hydrostatic test would have to be made at another time, and when ready to make the test it would take ordinarily from fifteen minutes to one hour.

The inspections made as per section 13 may take anywhere from one to four hours; ordinarily one to two hours will do it. It is my opinion that an inspector could average to inspect one engine a day, or 300 per year. Where conditions were favorable he could make three per day; that would be in large shops. There would need be but few days that he could not make at least one. The inspector

and the railway official in charge of general repairs would be expected to work together to some extent, so as to assist each other.

Now as to cost: Inspector-general, \$5,000; 5 district inspectors, \$15,000; 200 local inspectors, \$360,000; each local inspector (\$100 per month expenses), \$240,000; 7 clerks, \$8,400; other necessary expenses, \$121,600; total, \$750,000.

In the event it should be necessary to employ 25 more local inspectors, in order to do the work as provided for in section 13 of the bill, same would cost \$75,000, including expenses, and that would leave for other necessary expenses \$46,600. I believe if this law is enacted and \$750,000 appropriated it will reduce the accidents one-half, and save at least 120 lives and prevent the injury by hot water and steam of at least 1,828 persons.

Mr. BARTLETT. If there are 60,000 engines and one inspector can inspect 300 a year, it would require 200 inspectors?

Mr. WILLS. Yes, sir.

Mr. RICHARDSON. It is very unfortunate, because there is a spasm of economy on in the country at this time.

Mr. WILLS. I think there is also a disposition to economize at the loss of life, and I hope you gentlemen will not overlook that.

It will also save to the service of the railway companies with good records many of its most faithful, loyal, and trusted employees and servants, men, some of whom, have done much to make the railway companies and railway managers what they are to-day. This, in many cases, instead of having their names recorded on the books of one of the departments of this great Government, that should be "a government of the people, by the people, and for the people." Now, these men are shown as derelicts; if not worse, as 44 deaths and 62 injuries are shown by the reports filed by the railway companies charged to either indifferent or incompetent locomotive engineers.

I would like to say a word in explanation of another question that was asked at the last hearing. On most roads, under present conditions, freight locomotives are run first in first out in freight service, and engineers the same, and there may be 6, 8, or 10 more engineers than engines. In passenger service two engineers may be assigned to one engine, or three engineers to two engines is often the case, and as a general rule the engineer does not know what engine he is going out on.

Forty years ago when it cost nearly as much to paint a passenger locomotive as it costs now to build one, the pendulum swung too far one way, now it has gone as far the other way.

And again, I wish to repeat, if the engineer is guilty, as indicated by the reports filed with the Interstate Commerce Commission, then let a government official who is in no way beholden to the railway companies or the engineers investigate and render the decision. Present methods are unfair and unjust.

I wish to appeal to you on behalf of 65,000 members of an organization of loyal and law-abiding citizens of this great country, who compose one of the most conservative organizations, and perhaps the most conservative and powerful in our country to-day, to grant us the relief we seek by this bill. Again, I wish to say that in many cases ambition is overriding judgment and we are not receiving the protection from our employers that we are entitled to. We ask and



pray that our lives and limbs and reputations be given just protection; only justice.

I thank you.

The CHAIRMAN. We set this meeting principally because there were some gentlemen from out of the city who wished to be heard. It appears that there is no one here from out of the city who desires to be heard. There are some gentlemen from out of the city who have applied to the committee for a hearing, but it was not practicable yesterday to notify them of the meeting this morning. So the matter will be left in abeyance for the committee to determine hereafter.

(Thereupon the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Monday, May 16, 1910.*

The committee met at 10.25 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. We are prepared to hear the gentlemen in behalf of the locomotive boiler inspection bill.

Mr. ROE. Mr. Chairman, I would like you to hear Mr. Jeffery.

**STATEMENT OF MR. H. S. JEFFERY.**

The CHAIRMAN. What is your business?

Mr. JEFFERY. I am a boiler maker by trade. I have had sixteen years' experience in designing and construction and repairing of boilers.

The CHAIRMAN. What is your business at present?

Mr. JEFFERY. Consulting engineer.

The CHAIRMAN. Where?

Mr. JEFFERY. Located in Richmond, Va.

The CHAIRMAN. Whom do you represent here now; anybody especially?

Mr. JEFFERY. Nobody in particular.

The CHAIRMAN. You appear at the request of Mr. Roe?

Mr. JEFFERY. Mr. Roe asked me to appear here first to-day.

The CHAIRMAN. On the locomotive boiler inspection bill?

Mr. JEFFERY. Yes, sir; on the locomotive boiler inspection bill.

Mr. BARTLETT. You are a consulting engineer?

Mr. JEFFERY. Yes; on boilers and engines. I am a boiler maker.

Mr. BARTLETT. I beg your pardon?

Mr. JEFFERY. I have had sixteen years' experience in designing, construction, and repair of boilers, especially locomotive boilers. In the past I have held important positions with boiler manufacturing concerns, locomotive manufacturers, and railroads, and I desire to speak of matters that have come under my observation, and also to make a brief reply to some statements that have been made by parties that are opposing the bill.

Mr. TOWNSEND. What railroad experience have you had?

Mr. JEFFERY. I served my time with the Seaboard Air Line Railroad; I was five years with the American Locomotive Works of Richmond, Va., building and repairing locomotive boilers; and I worked for the Louisville and Nashville for about six months—not quite six months, but pretty near—altogether close onto ten years, you might say.

Mr. BARTLETT. You say you served your apprenticeship?

Mr. JEFFERY. Yes; with the Seaboard Air Line Railroad. Before the subcommittee of the Committee on Interstate Commerce of the United States Senate, Mr. Kendrick, vice-president of the Santa Fe Railroad, made the following statement. I read from page 86 of the hearings before that subcommittee:

Of all the boiler explosions occurring on 134 roads owning 34,610 engines from January 1, 1905, to November 1, 1909, resulting from any cause whatsoever, 98.7 per cent were due to the carelessness of the men running them in permitting the water to run low, and no law could reach and prevent such casualties.

Such a statement, Mr. Chairman, is inaccurate and unfair, and, coming from a foremost railroad man of the country, is both fortunate and unfortunate. As will be noted, this statement covers 134 railroads, and gives the percentage at 98.7 per cent. Now, there is an association in the United States called the International Master Steam Boiler Makers' Association. It is not a labor organization or a secret society, but it is an organization formed for the betterment of boiler work. I might say that possibly 90 per cent of the railroad foreman boiler makers belong to this association. Two years ago they appointed a committee to look into the subject of boiler explosions and make a report, and I will read from the official proceedings of the second annual convention of this association, held in Detroit, Mich., May 26, 27, and 28, 1908. They assigned the following reasons:

(1) Defective design, resulting in weakness of parts, defective circulation, faulty arrangement of braces and stays and other matters over which the designer has control.

One would naturally think that the designer of the locomotive boiler would be one who was familiar with it, and had some familiarity with the construction, repair, and operation of a boiler, but I am sorry to say that that is not the case throughout the country. A great many men designing boilers have no practical experience. They are what you might call technical men, or what I would call bookish men, copyists, and they copy from one to another these designs mistakes and all. Unfortunately these men do not cooperate with the men who operate the boilers; there is no cooperation between them at all.

When I was at Richmond, Va., the Baltimore and Ohio Railroad placed an order there for forty-odd boilers of different designs. The drawings came down, and on looking the drawings over I noticed that the pitch of the stay bolts was such as to render the whole boiler unsafe, and I sent the designs to Mr. Duprè, and he in turn took the matter up with Mr. Gillis, who was superintendent of the locomotive works at Richmond, Va., and they communicated with the Baltimore and Ohio Railroad, and the Baltimore and Ohio Railroad replied to go ahead and build the locomotives exactly according to the drawings and specifications, which we did. I had no authority to cancel the order or to do any thing about it, and they said to go ahead and build the locomotives, which we did.

Some time later Mr. Gillis sent word to come to the office, and he made inquiries in reference to the boilers, saying that he had a complaint. It appears that a boiler had exploded, killing two or three men, and they wanted to lay it to the faulty construction; but as a matter of fact it was on account of the faulty design. I merely mention that to show you that having reported this and given them an opportunity to correct it, they did not avail themselves of it and it went through. If railroad locomotive boilers were under inspection as steamboat boilers are at present, that would have been impossible; it would have been taken up with the government inspector, and he would have stopped it right there. The boilers would have been redesigned, and they would have been positively safe, and probably that explosion would have been prevented.

The second clause reported to this convention of the International Master Boiler Makers' Association, and accepted by them, was:

2. Poor construction, including defective material, faulty workmanship, omission of braces, stays, etc.

It would hardly seem possible that the foreman boiler makers would make a report of faulty construction when it lies presumably in their power to do good construction. When I was with the L. & N. Railroad, about five years ago, we endeavored to do the work right, but the time set on a good deal of the work was so limited that we could not make the repairs as they should have been made. It was not an uncommon occurrence for a locomotive to come in what we call the back shop—that was the main shop—and on the smoke box would be stated the time the engine arrived and the time it was to go out. Rarely was I consulted, as head of the boiler department, as to the extent of the repairs that should be made. It appeared that the repairs would be made in accordance with the time that they wanted the engine, and we have let many a boiler go out of the Louisville and Nashville shops in Kentucky that was not as thoroughly repaired as it would have been had the locomotive been retained in the shop as long as it should have been. Sometimes I protested, and in other cases I did not. I did not take the matter up with the superintendent of motive power, but with my superior officer and let the responsibility rest there. Other times we had locomotives come in from the roundhouse for what we called running repairs, stay bolts were leaking and flues were leaking, and we frequently had to put in sal ammoniac and horse manure and sawdust, and that would tide the locomotive over for a trip or two. Another boiler would come in and we would test the stay bolts, and we would report 10, 20, 30, 40, and 50 defective bolts. Sometimes we would take them out and sometimes we would not. That would depend upon the time we had. It was not because we did not have force enough, but because they would not take the engine out of service long enough for the repairs to be made.

Mr. BARTLETT. Were you the head of that department at that time?

Mr. JEFFERY. Yes. I took these matters up with the assistant master mechanic, time and time again, but all the business I did with him was done on paper. I had to make a report to him on paper, and he sent back replies. Sometimes I would get from him 50 letters a day, sometimes 60 letters a day. It was all on paper. I had some of

those reports, but when I left the road they were the property of the railroad and I left them behind.

Mr. STAFFORD. The difficulty you speak of was not governed by their not having a reserve force?

Mr. JEFFERY. On certain classes; yes, sir.

Mr. STAFFORD. Have you any knowledge as to the practice among the railroads as to having reserve engines to take the place of engines that need repairs?

Mr. JEFFERY. From my personal knowledge, of course, I can only speak for the railroads I have been connected with; but I have a number of statements here from other parties, which I intend to put in the record, which I believe will cover that. But personally I will have to speak, of course, just for the railroads with which I was connected. On the Louisville and Nashville Railroad, with some classes of engines we seemed to do all right, but other classes we did not.

The CHAIRMAN. How long were you with the Louisville and Nashville road?

Mr. JEFFERY. Possibly six months.

The CHAIRMAN. What was your position there?

Mr. JEFFERY. General foreman boiler maker.

The CHAIRMAN. And you let these engines go out in that condition?

Mr. JEFFERY. Yes, sir. What could I do? How could I help myself?

The CHAIRMAN. That is not what I asked you. You did do it?

Mr. JEFFERY. Yes, sir.

The CHAIRMAN. What did you leave for?

Mr. JEFFERY. I protested to the master mechanic on occasion after occasion about these conditions, and there arose some friction between us, he taking the position that if I held up the engines and tied up the boiler work, they would never move the trains; and finally I became pretty well disgusted with the way things were going, and I secured another position, and left. I went direct from the Louisville and Nashville to the Davenport Locomotive Works.

The CHAIRMAN. At Davenport, Iowa?

Mr. JEFFERY. Yes, sir.

The CHAIRMAN. How long were you there?

Mr. JEFFERY. I remained there a year.

Mr. SIMS. Have you finished reading that report?

Mr. JEFFERY. No, sir; I have only read two parts of it.

Mr. BARTLETT. When you were calling the attention of the master mechanic to the fact that these engines were not sufficiently repaired, what would he say?

Mr. JEFFERY. Well, he would just simply say, "We have got to move the trains."

Mr. BARTLETT. One other question, and then I will not ask anything further. Do you recall that any explosion or accident or casualty occurred during that time from any of those engines that were insufficiently repaired which had been brought into the roundhouse, into the shops, for repairs, and which were not permitted to be repaired because they were not left there a reasonable length of time, or by reason of the fact that the master mechanic did not permit you to make the necessary repairs? Did any accident occur in that way?

Mr. JEFFERY. We did not have any boilers blow up, you might say, in their entirety.

Mr. BARTLETT. I did not mean that; that need not occur. Did any of those engines that were brought into the engine house for repairs and were not sufficiently repaired cause any accidents or casualties, whether they were serious or minor, during the six months you were there?

Mr. JEFFERY. The only accidents—what you might term accidents—were from sending boiler makers into these boilers with 50 or 100 pounds of steam on to calk leaks, and the hot water squirting on them.

Mr. BARTLETT. You do not understand my question.

Mr. JEFFERY. Well?

Mr. BARTLETT. What I ask you is, whether you recall that any of those engines, during the six months you were there, which had not been repaired as they should have been by reason of the fact that you were not given sufficient length of time, because they were pressed for the need of the engine, had any accidents; if there was any accident to an engine, serious or otherwise, while on the road, which had been in the shop for repairs and had not been repaired. Do you recall any such?

Mr. JEFFERY. No such accident occurred while I was there, but they might have occurred after I left.

The third cause given in this report to the convention is:

3. Decay of structure with time, or in consequence of lack of care in its preservation, local defects due to some cause, as to some unobserved leakage that produces deterioration.

Taking up that phase of it, speaking from my personal experience of it, we had a lot of boilers come into the L. and N. shops—and I have a lot of statements here that the same is true of other places—where we did not inspect the boiler thoroughly. You can not inspect any boiler thoroughly unless you go inside of it and examine it. Some boilers are so constructed, unfortunately, that you can not examine them. I have some specifications here of the Southern Railway, and the official specifications of numbers of these boilers show that no man can enter those boilers to save his life. Those boilers could not be inspected, for the reason that you could not go in them. It has been stated by the superintendent of motive power of the Louisville and Nashville Railroad that you could simply stand on the outside and observe the inside; that it was not necessary to go inside. There is a plate right over in the corner of the room there, taken out of a boiler, and you can look on the outside and that plate seems to be in good condition, with no possible defects such as cracks, or any marks of that kind; but you look on the inside, and you can see cracks and these other marks. That is only a portion of a boiler, but it gives you a pretty good idea of what may happen all over the entire boiler, or in certain parts more prominent than other parts.

Mr. BARTLETT. Did that boiler blow up?

Mr. JEFFERY. No, sir; they fixed that before it did blow up. That was taken out of a boiler recently. I just brought that to show you why it is necessary to inspect a boiler on the inside.

The CHAIRMAN. If they could not inspect that boiler on the inside, how did they come to take it out?

Mr. JEFFERY. They could inspect that particular boiler on the inside. That was not one of those which they could not inspect

inside. I merely brought that plate here so that you could understand the necessity of these boilers being so constructed that they could be inspected on the inside.

Mr. SIMS. A boiler that could not be inspected inside could not be reached any more by a government inspector than by any other.

Mr. JEFFERY. They could turn around and take those boilers that they have of that kind—they have not many—and reconstruct them; and that is one reason possibly why they oppose the bill, because they know they would have to do that. Furthermore, when these boilers wear out, instead of taking the boilers that are properly constructed, and ordering new ones by them, they send to the plant and have the old boiler duplicated, with all its defects, instead of having that boiler reconstructed so that it could be inspected.

Mr. SIMS. The bill we are considering does not prohibit the boilers that can not be inspected from the inside, does it?

Mr. JEFFERY. I should think so.

Mr. SIMS. I am asking for information.

Mr. JEFFERY. Yes; it prohibits the use of boilers that can not be thoroughly inspected. There are some parts of a boiler that possibly could not be observed from an internal inspection, but the greater part of a boiler could.

The CHAIRMAN. What is the general type of the boilers being turned out by the Baldwin or other large locomotive works, as to whether they are capable of being inspected from both within and without?

Mr. JEFFERY. At the present time most of the boilers are of the wide fire-box type. There are various types. The majority of boilers are now being constructed so that they can be inspected internally; but there is another handicap there. To go inside the boiler necessitates the removal of the dome cap and in some cases the removal of the standpipe, so that when you get a pig-headed foreman—excuse the expression—who will not permit that dome cap to be removed because he has got to have that engine out, that inspection will not be made, and the result will be that the longitudinal and other braces of the boiler may be broken, and the defect never noticed, and the result is that the boiler blows out when there is low water.

The CHAIRMAN. Will you please proceed as rapidly as you can. The time is very limited, you know.

Mr. JEFFERY. The fourth cause reported to the Master Boiler Makers' Association was:

4. Last, but not least, is management in operation, giving rise to excessive pressure, low water, or the sudden throwing of feed water on overheated plates, or the production of other dangerous conditions, failure to make sufficiently frequent inspection and test, and thus to keep watch of these defects which grow dangerous with time.

I wanted to touch on this, Mr. Chairman. I have a plate here that represents a portion of a boiler [producing plates with stay bolts]. This is to represent the outside wrapper sheet, and this the fire-box sheet [indicating], and these are the stay bolts. These stay bolts are to support these sheets, so that they will not be subject to deformation. This, if subjected to pressure too great, will make these stays bulge and pull off, but in the majority of the boilers the stays are properly spaced to support the sheets satisfactorily. These stay bolts break, due to the expansion and the contraction of the sheets,

which swell with the heat and then reduce again as they cool. These stay bolts are tested by a man tapping on the fire side, this side [indicating] of the boiler, and ascertaining if any of the bolts are broken or fractured. A broken bolt is one that is broken entirely through, and a fractured bolt is one that is broken not entirely through. A great many boiler makers claim that they can ascertain a fractured bolt by the hammer test, but when they make an internal inspection afterwards they find that they are very much mistaken. Some of the boiler makers state that an internal inspection is not necessary. I have a number of statements that I am going to place before the committee from foremen boiler makers that they have made public utterances before conventions and other places, and I do not know of one foreman boiler maker in this country, except those owned body and soul by these companies, that contends that you can find a fractured bolt by this test. You can find a broken bolt, but not a fractured bolt.

MR. TOWNSEND. How would you test for this?

MR. JEFFERY. Just make the inspection and make the hammer test, and by making both tests you will find all that a man can find.

MR. TOWNSEND. You could not get in between those plates?

MR. JEFFERY. Oh, no. A man goes inside a boiler and takes a stick with a torch, or a light of some kind on the end of it and gets the light right down on these bolts.

MR. TOWNSEND. Suppose a bolt is fractured between the plates?

MR. JEFFERY. There is a watermark every time where there is a fractured bolt. You put your light down there, and you can see it, where the bolt is fractured. Now, they have a little hole drilled down through here in these bolts that they call the tell-tale hole and if the bolt is fractured, steam will ooze out of here and give warning. When these bolts are fractured they just take that hole and put a nail in it and stop it up. That does not replace the fractured bolt, but it does stop the leak, and away it goes, in that fashion.

MR. TOWNSEND. Now, as I understand, your answer to the gentleman is that it is not because of the negligence or carelessness of the engineer, but by reason of faulty construction?

MR. JEFFERY. It is partially by faulty construction and partly by lack of thorough inspection, and lack of making repairs after defects are known. We found all classes of defects, but we could not repair them as they should be repaired.

MR. BARTLETT. There is nothing in this bill that specifically requires inspection from the inside—that you shall have boilers so that they can be inspected from the inside—that I can find.

MR. JEFFERY. Well, now, Congressman, I think you will find it there. It speaks of an internal and an external inspection.

MR. BARTLETT. It provided for a proper inspection by a man skilled in that line.

MR. JEFFERY. Yes.

MR. BARTLETT. Besides, the Interstate Commerce Commission can make proper regulations for further inspection.

MR. JEFFERY. I have a letter here from the Hartford Steam Boiler Inspection and Insurance Company, signed by the secretary, and he expresses great surprise that the vice-president of the Santa Fe system should say that 98.7 per cent of all boiler explosions

were due to the carelessness of the men running the engines, in permitting the water to run low. He says:

No such percentage of stationary boiler explosions is due to carelessness of the attendants.

Mr. FAULKNER. Would you let me ask you whether that is not simply with reference to stationary boilers, and not with reference to locomotive boilers?

Mr. JEFFERY. He makes mention of the statement of the vice-president of the Santa Fe road, and then says:

I am surprised at the statement of the vice-president of the Santa Fe system in stating that "98.7 per cent of all the boiler explosions occurring on 134 roads were due to the carelessness of the men running them, in permitting the water to run low." (P. 86; taken from S. Doc. No. 446.)

Mr. FAULKNER. But his company is an insurer only, and an inspector only, of stationary boilers. He knows nothing about locomotive boilers.

Mr. JEFFERY. I want to put in the record this list of boiler explosions of locomotive boilers, said list being furnished me by the Hartford Steam Boiler Inspection and Insurance Company. It covers 66 boiler explosions since August 22, 1908.

Mr. FAULKNER. How did they get that information? They do not insure locomotive boilers and do not inspect them.

Mr. JEFFERY. I do not presume they insure them.

Mr. FAULKNER. How did they get the information, now?

Mr. TOWNSEND. If the witness will proceed we will hear the other side later.

(The list of explosions referred to will be found appended to this hearing.)

Mr. JEFFERY. Referring back to the statement I was just about to read when Mr. Faulkner interrupted me, I have a statement here from Mr. A. Hinzman, from Kansas City, Kans. This statement I will read. It is as follows:

KANSAS CITY, KANS., *March 27, 1910.*

Mr. H. S. JEFFERY,  
*Washington, D. C.*

DEAR SIR: Whereas I note that R. E. Smith, general superintendent of motive power of the Atlantic Coast Lines says that a statement in regard to 400 defective stay bolts in a boiler is an "absurdity," I send you full data about boilers of the Rock Island Railway System.

Following is a list of engines with broken and fractured stay bolts removed at the Rock Island Railway shops, Armourdale, Kans.:

Engine 1917 was in shop November, 1908, and 364 bolts were removed. Nearly 300 were broken and the balance fractured.

Engine 1927 was in the shop December, 1908, and 406 bolts were removed. About 300 were broken and the balance fractured.

Engine 1918 was in the shop March, 1910, and 125 bolts were removed. About 80 bolts were broken and the balance were pulled through the sheet.

Engine 1916 in February, 1910, was in the shop and 106 bolts, all broken, were removed.

Engine 1924 was in the shop March, 1910, and 210 bolts were removed. There were 130 broken and the rest fractured, etc. There were 18 bolts in one nest and the sheet bulged.

Engine 1901, February, 1910, was in the shop and 49 broken stay bolts removed.

Engine 1318 was in the shop April, 1908, and 125 defective bolts removed. There were 110 broken and the balance fractured.

All the above relate to only one road and to boilers of locomotives repaired at the shops stated.

Yours, very truly,

A. HINZMAN.



I have here a statement also signed by Mr. O. A. Clark.

Mr. BARTLETT. This list is not signed.

Mr. JEFFERY. That is from the official records. I just wrote that out from the official records. O. A. Clark makes the following statement:

Mr. H. S. JEFFERY,

*Washington, D. C.*

WASHINGTON, D. C., *March 28, 1910.*

DEAR SIR: Agreeable to your request for a statement on my part as to what I know about the past and present condition of locomotive boilers, together with a brief statement about myself, would state that I am a practical boiler maker of ten years' experience in the construction and repairing of steam boilers, and have worked for the following railroads:

Seaboard Air Line Railroad, Baltimore and Ohio Railroad, Norfolk and Western Railroad, Southern Railway, and the Louisville and Nashville Railroad.

I am at present employed by the Southern Railway and I am stationed at Birmingham, Ala., and have been in their employ for the past fourteen months; also worked for them several years ago for a period of thirteen months.

I know in a general way what practically every boiler maker knows, and that is: Boilers are frequently in service when in an unfit condition, and it is the practice throughout the country—at least with the railroads that I have worked for—to plug the telltale holes of stay bolts when steam and water from within the boiler finds an outlet by means of them. When I was in the employ of the Baltimore and Ohio Railroad, which was in 1904, they furnished special plugs and tools for the purpose—

Just imagine that, special tools to plug up these holes, after they have put them in there to find the defects.

When I was in the employ of the Baltimore and Ohio Railroad, which was in 1904, they furnished special plugs and tools for the purpose, and I have in accordance with orders issued by the foreman plugged holes to the extent of 30 in a single locomotive boiler in a month, and plugged in practically every locomotive boiler in service on that division from 5 up.

I was employed by the Louisville and Nashville Railroad in 1905—

That was the same time when I was there—

and was stationed at Birmingham, Ala., and while in their employ I saw a locomotive boiler with 72 broken stay bolts in one nest, and the sheet was bulged about 2 inches. I also saw a number of engines—or rather there were engines on that division—the boilers of which had from 30 to 100 broken stay bolts and with nests of 6 to 10 bolts, and the locomotives were practically in constant service. They were taken out of service for only a short period, and only long enough to remove a portion of the broken stay bolts, only sufficient to save the sheet from deformation.

I want to say that when I was with the Louisville and Nashville Railroad, when I would find a boiler with 30 or 40 of such bolts, and they were congregated together in one nest, we frequently, to save the sheet from deformation, were permitted to take out a bolt here and another there, scattered around, and replace them, and then when there was opportunity the inspector would go in and mark the bolts with a center punch mark, so that we would know them again and we would not have to do the whole thing over, and he would frequently come to test the bolts, and find the bolts he marked in the first instance, the other bolts he tested the first time, were still in there. This affidavit continues:

Time and space do not permit stating at length or fully in regard to all that I have seen, but I do know that the "dope cure" is used extensively by railroads, and I further know that "fractured stay bolts" can not be found by the hammer test, and I have yet to see the man that can detect "fractured stay bolts" by the hammer test.

Regarding boilers that are so constructed that an internal inspection is impossible, would state that thirty-seven and thirty-eight hundred class of the Southern Railway are so constructed.

Mr. BARTLETT. You mean 3,800 engines?

Mr. JEFFERY. That is the class of the engine; that is the number of it.

Mr. BARTLETT. The number?

Mr. JEFFERY. Yes.

The other railroads as given above have many locomotive boilers so constructed, but I am unable to recall their class number.

This young man's statement is substantiated, because here are the official records.

Mr. STAFFORD. Do you know whether those classes named are of recent construction?

Mr. JEFFERY. I can tell you by looking at the record.

Mr. STAFFORD. Do you know what proportion of the engines is of those classes as compared with all other locomotives?

Mr. JEFFERY. He just mentioned the thirty-seven and thirty-eight hundred classes here, and the record is here; 3848 to 3851, inclusive, seem to have been constructed, according to this, from November 29, 1898.

Mr. TOWNSEND. Do you know whether it is the duty of an engineer operating an engine to report defects?

Mr. JEFFERY. Only such as he has knowledge of. That is his duty, to report them on the report at the end of the trip.

Mr. TOWNSEND. Can you state whether he is responsible for running an engine unless it has been repaired?

Mr. JEFFERY. The engineer has no means of knowing when the stay bolts are replaced.

Mr. TOWNSEND. I am talking about the defects he notes.

Mr. JEFFERY. Yes.

Mr. TOWNSEND. Suppose he notes a defect and reports it. Do you know of his running that engine after he had reported the defect?

Mr. JEFFERY. Yes, sir; on the Louisville and Nashville Railroad. I have had engineers come to me and ask: "What did they do with those stay bolts that were leaking at the telltale hole? Did you take them out or rivet them over?" We would never tell the engineer what we had done. They make inquiries of that type.

Mr. RICHARDSON. When that boiler is originally constructed is there not some method and mode and manner of determining what the ratio of pressure is to the square inch?

Mr. JEFFERY. Yes.

Mr. RICHARDSON. What is it? What do you call that?

Mr. JEFFERY. There is the bursting pressure and the working pressure. There is a ratio of 5 to 1 between them ordinarily.

Mr. RICHARDSON. Bursting pressure?

Mr. JEFFERY. Yes.

Mr. RICHARDSON. And the working pressure?

Mr. JEFFERY. Yes.

Mr. RICHARDSON. Those are the two tests? What is the difference between the hydrostatic pressure and the working pressure?

Mr. JEFFERY. Let me get your question clear. You mean the manner of testing?

Mr. RICHARDSON. Yes; the manner of testing.

Mr. JEFFERY. The hydrostatic test is to apply cold water and pump the boiler up until you get a certain pressure.

Mr. RICHARDSON. What is the result of that test, to the square inch, on the boiler?

Mr. JEFFERY. One and a half to one.

Mr. RICHARDSON. What is the working pressure to the square inch?

Mr. JEFFERY. Five to one, ordinarily.

Mr. RICHARDSON. If a boiler explodes, how can you tell whether that was complied with or not?

Mr. JEFFERY. If a boiler explodes, there is bound to be a rupture at some point.

Mr. RICHARDSON. I know; but I am asking, if it does explode, can you tell whether it complied with the test in the beginning?

Mr. JEFFERY. Applying the hydrostatic test to a boiler does not always find the defects. I recall one boiler where we applied the hydrostatic test and to all intents and purposes the boiler was in good condition. It happened, though, that one of the side bars that hold up the grates was broken, and I was working then as a boiler maker and I was instructed to take out that side bar and replace it. And when I took the side bar out there was a big pile of ashes up in one corner, and I brushed that down with my hammer, and then I noticed there was a big piece of scale up in there and I knocked that off with my hammer, and when I did that the water ran out of the boiler.

Mr. TOWNSEND. What did that indicate?

Mr. JEFFERY. That the boiler at that point had deteriorated and been eaten out.

Mr. TOWNSEND. Did it suggest that it had not been subjected to the proper test?

Mr. JEFFERY. No; the ratio test had been put on there, but it indicated that a thorough inspection had not been made. If it had been, they would have gotten that. In making any ordinary inspection we would not have bothered with that if it had not been that the grate bar was broken.

Mr. TOWNSEND. Just from a common-sense standpoint, do you not admit that the incentive is just as great upon the railroad to have these boilers made perfect as it is on anyone else, or even greater?

Mr. JEFFERY. They make them perfect enough, but they do not try to keep them so.

Mr. TOWNSEND. You can not get anything perfect in this life, no matter what care you use.

Mr. JEFFERY. They do not use the best they can.

Mr. TOWNSEND. Is it not to their interest to do it?

Mr. JEFFERY. Certainly it is to their interest.

Mr. TOWNSEND. In money and men?

Mr. JEFFERY. Certainly it is to their interest to do so.

Mr. TOWNSEND. Money interest?

Mr. JEFFERY. Yes; money interest.

Mr. BARTLETT. The same question would apply to steamboat boilers, would it not?

Mr. JEFFERY. Yes; but the steamboat people opposed the steamboat-inspection bill when it was here.

Mr. BARTLETT. But I say it is just as much to the interest of the owners of steam vessels that their boilers should be properly made?

Mr. JEFFERY. Yes; it is to the interest of every person that the boiler should be properly made.

Mr. MILLER. I was not here when you were discussing the question of accidents that occurred in 1908, or rather the number of boiler explosions. How many did you say occurred during the year 1908, or about what number?

Mr. JEFFERY. There were 66, if I recollect right. Here is the list.

Mr. MILLER. Can you tell whether those explosions were due to defects of the engines, and if there had been the proper kind of inspection, whether those explosions would have occurred or not?

Mr. JEFFERY. I have no personal knowledge of that lot of explosions, as to what caused them or what would have prevented them.

Mr. MILLER. Have any of you representing the people who want inspection of boilers any information as to the number of deaths or the total number of people injured in the United States in the year 1908 in those 66 explosions that occurred?

Mr. JEFFERY. I could not tell you about the year 1908, but the Interstate Commerce Commission has reports made by the railroad companies showing that in the five years ending, I think, in 1909, there were about 365 men killed and upward of 3,000 injured; that is, of their own employees, I believe. That is a volunteer report I believe, on their part.

Mr. TOWNSEND. Now, if you can just touch the points that you wish to make certain, and insert what else you have in the record, you will give the other men who are here an opportunity to be heard. I do not want to shut you off, but we want to hear as many men on as many different phases of the subject as possible.

Mr. JEFFERY. Here is a statement that I want to read, signed by a boilermaker, G. Kraft. This statement is as follows:

ALEXANDRIA, VA., March 29, 1910.

Mr. H. S. JEFFERY, Washington, D. C.

DEAR SIR: I desire to state that in 1904, when I was in the employ of the Baltimore and Ohio Railroad Company, I inspected engine 1956, and finding the boiler in an unfit condition, made proper report to the night roundhouse foreman (I worked on the night shift), but he gave me to understand that he was a mechanic, and he, the roundhouse foreman, permitted the locomotive to go out on a trip, the boiler exploding and killed the fireman and brakeman, also injuring the engineer (now resides in Baltimore, Md.), he losing a leg.

This locomotive was almost new—that is to say, had been received from the manufacturer only a few months before. When I examined the fire box I found the crown sheet down about 2 inches, starting about two rows of bolts from the front and extending back to within about six rows of the door sheet. It was down, generally speaking, the full length of the box.

I positively know that this explosion was due to a defective boiler, which I reported to the proper official, and he overruled me and sent the locomotive out on the road, and two men to their graves.

Yours, very truly,

G. KRAFT.

I have talked with that party myself, and he told me that the day after that explosion the officials had him come to their office, and told him what a good man he was, and how they were going to give him a life job and promote him, and everything else, and after they told him all those nice stories, then they wanted him to tell that the cause of that boiler explosion was not any negligence on the part of their officials; and when he declined to do so, he was discharged, and has remained so ever since, practically blacklisted.

Mr. BARTLETT. Was he on the engine when it exploded?

Mr. JEFFERY. No, sir; he was a boiler inspector, and he inspected this boiler and reported it in poor condition, and the officials let it go. That explosion cost the railroad company about \$10,000 damages for each man killed. I have another statement here from E. K. Corn. This reads as follows:

WASHINGTON, D. C., March 28, 1910.

Mr. H. S. JEFFERY, Washington, D. C.

DEAR SIR: Concerning what I know in regards to the condition of locomotive boilers of such railroad companies that I have worked for, would state that I am a practical boiler maker of nine years experience, and have worked for the Chicago and Alton Railroad, the St. Louis and San Francisco Railroad, the Sante Fe Railroad, and the Southern Railway Company, and I am working for them at present at Spencer, N. C.

I have known of many boilers in service with broken stay bolts, plugged flues, tell-tale holes, etc. The "dope cure" is also used, and I have seen many boilers that were so constructed that an internal inspection is impossible.

I recall when I was on the Sante Fe Railroad considerable trouble was experienced with a certain class of locomotives in regards to certain stay bolts breaking. Finally they concluded to get around the difficulty by removing the bolts and plugging the holes. Naturally such a method did not appeal to me, or to anyone else that desired to thoroughly upkeep boilers, but the others and myself did what we were ordered to do, knowing full well that it was not right; but they, of course, and not the boiler makers are responsible.

Yours, very truly,

E. K. CORN.

Mr. RICHARDSON. That other man that signed that other paper here; where is he now?

Mr. JEFFERY. This man is working at Alexandria, Va., at the Southern Railway shops.

Mr. RICHARDSON. He is still in the employ of the railroad company?

Mr. JEFFERY. At this very moment, so far as I know.

Mr. FAULKNER. I would like to know where the originals of these statements are. These are not the originals?

Mr. JEFFERY. Sure; they are all there, copied.

Mr. RICHARDSON. Where are the originals?

Mr. JEFFERY. They made their statements and they were written out and they signed them. These are their signatures.

Mr. BARTLETT. These are the originals?

Mr. JEFFERY. These are the originals; yes.

The CHAIRMAN. You have a lot of those statements there. You had better put them in the record.

Mr. JEFFERY. I will put them in the record. I have statements here from foremen boiler makers throughout the country. I would like to put them all in the record.

There is one more thing I wanted to comment on, and that is, the superintendent of machinery of the Louisville and Nashville Railway stated before this committee that it took from three to ten days to thoroughly inspect a locomotive-engine boiler. There is not a locomotive boiler in this country, properly constructed, that will require over five hours to thoroughly inspect it.

The CHAIRMAN. With any kind of an inspection?

Mr. JEFFERY. A thorough inspection of any locomotive boiler can be made in five hours, at the utmost.

The CHAIRMAN. With any kind of inspection?

Mr. JEFFERY. I do not just quite grasp your point.

Mr. BARTLETT. He says, a thorough inspection?

Mr. JEFFERY. A thorough inspection—complete.

The CHAIRMAN. There are different kinds of inspection.

Mr. JEFFERY. Yes; we make a lot of fifteen-minute inspections.

The CHAIRMAN. You say any kind of inspection can be made within five hours?

Mr. JEFFERY. Yes.

Mr. RICHARDSON. That is, you mean the most complete and thorough inspection can be made within five hours?

Mr. JEFFERY. Yes.

Mr. RICHARDSON. The other man who was before the committee stated it would take ten days.

Mr. JEFFERY. Yes, from three to ten days, he said.

The CHAIRMAN. That five hours covers the whole thing?

Mr. BARTLETT. You do not mean including repairs? You mean inspection?

Mr. JEFFERY. I do not mean repairing the boiler. Repairs may take two months.

Mr. FAULKNER. How long does it take to prepare a boiler for inspection?

The CHAIRMAN. Never mind, Senator; we will take care of this. We do not permit this outside talk in this committee.

Mr. JEFFERY. That is about all I have to say, Mr. Chairman, unless there are some questions to be asked.

Mr. TOWNSEND. I want to ask you some questions on that. Supposing you have to take off a crown sheet; can you do that and inspect the boiler in five hours?

Mr. JEFFERY. The crown sheet? That is making repairs.

Mr. TOWNSEND. Supposing you have to take off any of the parts? I am not, perhaps, familiar enough with this. Suppose you have to take off something from the engine to make such an inspection as you think proper?

Mr. JEFFERY. May I offer a little explanation as to what a man does in making an inspection, so that it will be clear? A man can go inside of the fire box and test stay bolts with the hammer test and examine the fire box, which would only require an hour or an hour and a half, or possibly two hours. Then he can go to the front end of the boiler, open up the front end—and he can open up the front end in five minutes unless it is a very complicated one—and then examine that, and then after that it is a case of entering the boiler and making what they term the internal inspection. He will have to take off the dome cap. That will be taken off by the machinist. The construction of the boiler may be such that it will be necessary to remove the standpipe, and that will be removed by the machinist. But if a boiler has a big enough dome, the man that is inspecting the boiler will go down inside of it, and then he is on top of the flues, and he can examine the fire box and all parts of it. That would be what you might call a periodical inspection. Now, take that inspection where the flues are removed; of course, it takes some time to remove the flues.

Mr. TOWNSEND. How long?

Mr. JEFFERY. That will depend on how many there are and their size and the method of examination. If you make them pull them out through a 2-inch hole, it may take you a week. If you take them out of the drive-pipe hole, you can take them out in an hour.

The CHAIRMAN. That would not be in five hours.

Mr. JEFFERY. Removing the flues is not inspection.

The CHAIRMAN. Mr. Townsend asked you about the inspection. You said a complete inspection could be made in five hours.

Mr. JEFFERY. I say a complete inspection; complete inside, outside, upside down, and all around; every way you can think of.

The CHAIRMAN. Then you undertook to describe that inspection, and then you went off into repairs.

Mr. JEFFERY. I was going to describe the periodical inspection, and then I was going to describe the complete inspection when the flues were removed.

Mr. RICHARDSON. Then you do not consider the preparation as any part of the inspection?

Mr. JEFFERY. No, sir.

Mr. RICHARDSON. You have got to go through that, but you do not call that any part of the time necessary to make the examination?

Mr. JEFFERY. No, sir; that is not a part of the time.

Mr. RICHARDSON. Do you not know it is a custom among the railroads that a thorough, complete examination is made of every boiler, according to the age, after it runs a certain length of time; and whether they discover any defect, they make that examination by taking it all to pieces and examining it? [After a pause, during which the witness was laughing.] Well, you may laugh, but we do not understand.

Mr. JEFFERY. I assure you I am not laughing at your remarks, but at the idea of taking a boiler all to pieces.

Mr. RICHARDSON. I asked you if they did or not.

Mr. JEFFERY. No, sir; they do not.

Mr. TOWNSEND. You spoke about five hours for a complete inspection. I am interested in that. I will just ask this question of you: You said it would take five hours. Do you mean that within five hours' time you could discover any defect in an engine boiler?

Mr. JEFFERY. Every possible defect that could be discovered; yes, sir.

Mr. TOWNSEND. In a locomotive boiler?

Mr. JEFFERY. Yes, sir.

The CHAIRMAN. When you speak of five hours, do you mean after the engine is prepared for inspection, or five hours from the time it comes into the shop?

Mr. JEFFERY. Mr. Chairman, if it came into the shop with steam up, as they frequently do, of course we would have to blow the steam off. We could not take that as a part of the time of inspection.

The CHAIRMAN. How long would that take?

Mr. JEFFERY. That will depend upon the pressure, but say you could blow off the steam in a half hour, that boiler would then be so hot that no man could go inside of it.

The CHAIRMAN. How long will it take to cool?

Mr. JEFFERY. If you let it cool off of its own accord, possibly a day; but they will turn around and fill it up with cold water, and subject the boiler to all kinds of stresses.

The CHAIRMAN. If you fill it with cold water, how long will it take?

Mr. JEFFERY. Two hours, possibly.

The CHAIRMAN. Then can they inspect it within five hours from that time?

Mr. JEFFERY. Yes.

The CHAIRMAN. So that they will know at the end of seven hours from the time it comes in whether it is ready to go out or not?

Mr. JEFFERY. Yes; they can.

The CHAIRMAN. And that will give it the most thorough inspection known?

Mr. JEFFERY. Yes; that would give it a good, thorough inspection for a boiler in service. When an engine goes in the back shop for repairs they pull the flues, anyway.

Mr. RICHARDSON. Then after the inspection is made they are prepared to give a guaranty that it will run safely, without explosion.

Mr. JEFFERY. I think after that is done everything is done that can be reasonably expected to be done.

Mr. RICHARDSON. And that guaranty can be given?

Mr. JEFFERY. Yes, sir; I think so.

Mr. RICHARDSON. A guarantee can be given?

Mr. JEFFERY. So far as any man can do it.

#### STATEMENT OF MR. H. E. WILLS, OF CLEVELAND, OHIO.

Mr. WILLS. I am assistant grand chief engineer, Brotherhood of Locomotive Engineers. I would like, Mr. Chairman, to say just a few words with reference to the time it takes to thoroughly inspect a locomotive boiler. If an engine comes in hot, it will take perhaps from two to five hours for that engine to be cooled off so that she will be in condition for the men to work on her. Possibly it would take from three to five hours to take the dome cap off, possibly an hour or two to take the standpipe out, if necessary. If the engine comes in hot, it will take from six to eight hours to get the engine ready to inspect her boiler, and after that is done the inspection can be made in a matter of about five hours.

The CHAIRMAN. Does that include the hydrostatic test?

Mr. WILLS. No, sir.

The CHAIRMAN. That is one method of inspection, is it not?

Mr. WILLS. That is one method; yes, sir.

The CHAIRMAN. Does that require a longer time?

Mr. WILLS. No, sir. When the engine has the dome cap on and the boiler is in perfect condition and cool, they can apply the hydrostatic test in a matter of possibly an hour or two hours, and make it quite thorough. They can do that without taking the jacket off. By watching closely they can see if the water seeps through anywhere, and they can locate where that comes, and then they have to take the jacket off to find the exact spot and repair it. It takes a matter of two to three hours to make the test.

The CHAIRMAN. Is this inspection that the railroad companies do make—I do not remember now whether it is called the annual inspection or not, but it is made at certain stated periods about a year apart—made within the time you have mentioned?

Mr. WILLS. They can make it within that time if the boiler is so constructed that it can be inspected internally. Some of the boilers are so made that they can not be inspected.

The CHAIRMAN. Take those boilers that are so made that they can be inspected internally; how long do the railroad companies now take to make that inspection, the most complete inspection?

Mr. WILLS. I am unable to say.



The CHAIRMAN. You ought to be able to state that fact.

Mr. WILLS. We are complaining because they do not make the inspections as we see it and know it and understand it. The inspections are not made.

The CHAIRMAN. But you ought to know how long it takes them to make the inspections that they do make. Certainly your men make them, and you ought to be able to inform the committee as to that, as a matter of fact.

Mr. WILLS. I say it can be done as I stated to you.

The CHAIRMAN. That is a matter of opinion. How long does it actually take now?

Mr. WILLS. I never inspected one in my life; I never have seen it practiced where they made these thorough inspections.

The CHAIRMAN. All right.

Mr. WILLS. I wish to refer to some statements that were submitted by the superintendent of motive power and machinery of the Norfolk and Western Railroad in regard to inspections on that road, and I would like to have the same appear in the record of this hearing. This is taken from series No. 8 of hearings held before the Senate subcommittee, and they submitted some of their reports of inspections as practiced on the Norfolk and Western Railroad, as evidence that they do make these inspections. On the reverse side is the report of the repairs, and it shows the very thing we complain of, that even where the inspections are made the repairs are not made, and their own reports, as submitted there, showed it, and I wish to have the same thing published in the record here so that the gentlemen interested can see what they are in reality doing on the Norfolk and Western road, as shown by these extracts taken from their own records.

The CHAIRMAN. You ask us to republish this matter that has already appeared in that Senate hearing?

Mr. WILLS. Yes.

The CHAIRMAN. Very well; the stenographer will insert it.

Mr. WILLS. It is about three pages, pages 38, 39, and 40 of the Senate report. We consider it very pertinent, as it is taken from their own records which they submitted.

Mr. RICHARDSON. Do those three pages show all that was said on the subject?

Mr. WILLS. No, sir.

Mr. RICHARDSON. Why do you want to take only an extract from it?

Mr. WILLS. This is a simple proposition that is connected together in full on that particular occurrence. They submitted statements to show that they were making inspections, and when these reports were turned over, on the other side, where the report of the work done was recorded, we found that the engines were run day after day by their own reports before those repairs were made.

(The extract referred to will be found appended to this hearing.)

Mr. RICHARDSON. But why do you not put all that in?

Mr. WILLS. The point is that they did not make the repairs that even their own inspections showed ought to have been made, and we claim that is a condition that exists in localities where they even make the inspections; and on many of the roads we say that they do not make any systematic inspections, but they make inspections on certain roads when something occurs that forces them to make

inspections—the boiler gives out or the engineer in charge reports some defect. They then, in repairing that defect, discover other defects. While we know they have printed reports made that go to show that they do these things thoroughly, we deny that they are being done. We say that it is a farce; and they are not being done on many of the roads. We will not deny that they are being reasonably well done on some of the roads. We will admit that on certain roads they are making these inspections and repairs so far as they can with convenience to their traffic only; but that freight and passengers must be moved first and repairs to their boilers are made afterwards, provided the engine is in condition to be taken out of the house and hitched onto the train.

The CHAIRMAN. Has there been any improvement in the character of the inspection made by the railroad companies since these bills have been pending?

Mr. WILLS. There certainly have been great improvements on very many of our roads. The improvement is perceptible by the men who handle these engines. The International Biennial Convention of the Brotherhood of Locomotive Engineers met in Detroit the 11th of this month. This matter was laid before that body, composed of about 750 delegates, and the general consensus of opinion there is, as expressed by our men, especially to me, that there have been great improvements made on a large per cent of our railroads in the United States in reference to inspecting and repairing our boilers, within the past four months.

I wish, Mr. Chairman, to call attention to another article that I would like to have republished, and I will call the stenographer's attention to it, with your permission.

The CHAIRMAN. You mean another extract from the Senate hearings?

Mr. WILLS. Yes. It will be a matter of about four pages. It is a statement made by the grand chief engineer of the Brotherhood of Locomotive Engineers in regard to this question, and I think it would be no doubt read with interest by the gentlemen here.

The CHAIRMAN. Hand it to the stenographer.

(The extract referred to will be found appended to this hearing.)

Mr. FAULKNER. Does that include all that is submitted?

Mr. WILLS. I want it included.

Mr. FAULKNER. The whole of it?

Mr. WILLS. The whole of Mr. Stone's statement; yes, sir. It starts on page 51 in the Senate committee record.

Mr. TOWNSEND. What do you want now?

Mr. WILLS. There is in the hands of each member of this committee a bill that has been drafted after hearing the statements of those who were opposed to some of the former bills. The bill that is drafted now we believe can be adopted into law, and it will cost the Government about \$350,000 to \$400,000 to put it into operation, and we believe that many of the desired results could be obtained in that way. It asks the railroad companies to do practically nothing but what many of them claim they are doing now, only that the reports shall be filed with a government official designated to receive those reports. The bill further provides that a work report shall be filed shortly after the regular monthly report, to show that the work has been done. It provides for an inspector who may go at

any time and verify this work report, and also verify the inspection report, to see if it is being done. The bill provides that the reports should be made by the proper railway officials, under penalty and under oath.

Mr. NEALE. Is this the second bill that is pending?

Mr. WILLS. No. A copy of this, in typewriting, has been submitted to the members of this committee. It has not been introduced, but it is very much modified, and we believe will meet with but little, if any, opposition from the gentlemen representing the railroad companies.

Mr. NEALE. Can we have a copy of that?

Mr. WILLS. We will be glad to have you have a copy of it.

The CHAIRMAN. That is the last proposition you have?

Mr. WILLS. Yes; it has been submitted in typewriting only.

The CHAIRMAN. You have had several bills introduced?

Mr. WILLS. Yes.

The CHAIRMAN. The last bill introduced, I think, was the one introduced March 1, by Mr. Townsend.

Mr. WILLS. Yes, sir.

The CHAIRMAN. Now, you have submitted a modification of that bill?

Mr. WILLS. Yes.

The CHAIRMAN. You may hand that to the stenographer and have it printed in the record.

(The typewritten draft referred to, later introduced by Mr. Townsend as H. R. 25924, will be found appended to this hearing.)

Mr. FAULKNER. We have never seen that, Mr. Chairman.

Mr. WILLS. I would be glad if that could be printed in the record. That has been agreed upon by those who are asking for federal inspection.

Mr. RICHARDSON. You intend it as a compromise bill?

Mr. WILLS. Yes.

Mr. RICHARDSON. And you object to this bill which is under consideration because it is excessive in its provisions?

Mr. WILLS. This bill was introduced by our suggestion, but after hearing the evidence from the railroad companies and realizing that it might cost them something more than it does now, we who are looking for federal inspection of locomotive boilers, or federal control of locomotive boilers, have agreed amongst ourselves to accept this, which is just what they claim they are giving us now on many of our roads.

Mr. RICHARDSON. I understand that in your compromise bill you provide to pay the inspectors an average salary of \$1,800, and you have 100 of them?

Mr. WILLS. Yes.

Mr. RICHARDSON. And you have, additional chief inspectors, or inspectors-general?

Mr. WILLS. Yes.

Mr. RICHARDSON. And you pay their expenses?

Mr. WILLS. Yes.

The CHAIRMAN. I want to get this straight, if I can.

Mr. WILLS. Yes, sir.

The CHAIRMAN. The Townsend bill, introduced March 1, I suppose, was introduced at your request?

Mr. WILLS. Yes, sir.

The CHAIRMAN. That was introduced after the railroad companies had been heard on this subject before this committee?

Mr. WILLS. Yes.

The CHAIRMAN. And since then you have made this further modification?

Mr. WILLS. Yes; after hearing some statements made before the Senate subcommittee of the Committee on Interstate Commerce.

The CHAIRMAN. I just wanted the record straight.

Mr. WILLS. Yes.

The CHAIRMAN. Is that all?

Mr. WILLS. I believe that is all unless there are some questions.

Mr. CALDER. Do any of the States require inspection of locomotive boilers?

Mr. WILLS. Yes, sir.

Mr. CALDER. What States?

Mr. WILLS. New York State has a law, but to be honest with you, I can not describe it any better than to say that we look upon it as a kind of a farce; and I believe some other States have laws. Excuse me. I do not intend any disrespect to any State.

Mr. CALDER. Do you know whether any boilers have been inspected in that State under that law?

Mr. WILLS. I am not familiar with it.

Mr. CALDER. Do you know whether they have or have not?

Mr. WILLS. I understand that the men who are there claim that the law is of no value at all. It simply provides that the company shall file a statement of what they are doing.

Mr. Chairman, I would like to ask Mr. Martin to make a statement.

The CHAIRMAN. I do not want to be disrespectful to Mr. Martin, but we can hear him at any time.

Mr. MARTIN. That is all right.

The CHAIRMAN. Have you any one else here to be heard?

Mr. WILLS. Yes; no one from out of town. We expected General Uhler here this morning. He told me he would come, but for some reason, I know not why, he is not here.

The CHAIRMAN. Of course I do not care whom we may hear. We have ten or fifteen minutes more this morning. Will you finish this morning?

Mr. WILLS. I think we can. There are two gentlemen to come after Mr. Martin, but I do not think they will care to take more than five minutes each.

The CHAIRMAN. Very well.

#### STATEMENT OF HON. JOHN A. MARTIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO.

Mr. MARTIN. I will be very brief. Mr. Chairman. I do not care to appear at all, except at the request of these gentlemen, although I introduced one of the bills that is now pending before this committee, and my knowledge of this matter is not altogether confined to the sponsorship of that bill, which is a very slight modification of the bill introduced in the Senate by Senator Burkett. My interest is very largely due to the fact that I am or was a railroad man myself. I came of a railroad family. My father was one before me. I saw

four years' actual service as a locomotive fireman, besides other branches of railway work, and I have two brothers now who are locomotive engineers, and I illustrate the truth of the old adage, "that birds of a feather flock together;" I suppose I feel more at home with a bunch of railroad men than I do with a bunch of Congressmen. I was present at the former hearings before the committee, and listened with a great deal of interest to the presentation of the side of the railroad companies made by their very able representatives.

I wish to say now that I do not intend to bind gentlemen or their views by what I may have to say, but my principal objection, based upon my experience and observation, considering the object of this proposed legislation, is that it was very largely confined to the question of construction of locomotives. Now I believe that locomotives generally are about as well constructed as they can be, considering the class of service to which they are subjected, which is unquestionably the most severe class of service imposed upon any mechanism that has ever been invented by man. It is absolutely necessary that locomotive boilers should be durably and strongly and well constructed, but I think that this legislation goes not so much to the question of new construction as it does to old work; not new engines, but old engines that ought to be in the scrap heap or in the back shop for repairs. It is more largely a matter of inspection and repair, rather than construction. It is a well-known fact among all railroad men that practically all railroads suffer with a chronic shortage of motive power. They are always up against it for engines. I can recall to your minds in this connection the testimony of a very able gentleman who addressed this committee at length in reference to the Chicago, Milwaukee and St. Paul Railway, and I recall to your recollection the fact that it was brought out then, I think by Mr. Townsend, of Michigan, that notwithstanding the fact that there had been on the federal statute books for more than a year a law requiring the railways of the country to equip their locomotives with automatic ash pans, ash pans that can be dumped or emptied automatically, at that time perhaps not more than one-half of the locomotives on that railway had been so equipped.

Now, the equipment of locomotives with automatic ash pans is a very simple matter, and I would like to ask what condition do you suppose you would have found among the locomotive boilers on that road? The excuse of the officials was that they had been "up against it" for power; their power had been so hardly driven that they had not had time to equip their locomotives with the ash pans required by the federal statute. Neither, it would develop upon investigation, had they had time to inspect and repair their boilers. If they were required to run their engines without equipping them with the ash pans which were required by law, I think it very likely that they were running their boilers without the inspection and repair which is not required by law.

It is seventeen years ago now, as I remember, that the Santa Fe Railway Company equipped its locomotives with self-dumping ash pans. They equipped the engines with what we call the ash-pan blower, so that the fireman by simply turning the boiler on the blow-head could blow the ashes out of the pan. That was something that the locomotive firemen on the Santa Fe did; they brought about that great convenience to the firemen on the Santa Fe Railway system;

yet what a handful of firemen was able by voluntary agreement with the Santa Fe Railroad to accomplish seventeen years ago, national legislation on the subject has not been able to compel the Chicago, Milwaukee and St. Paul Railway to do up to date.

The CHAIRMAN. I do not see what that has to do with the question we have before us, which is the inspection of boilers. We are called upon here to listen to talk—not information, but opinions—about things that we have already made into law. I do not think the committee ought to be compelled to listen to this.

Mr. MARTIN. If the chairman will pardon me, it just has this to do with it, that these things can be done, and done easily; but while, as Mr. Wills has well said, some companies will do them voluntarily, it takes the law, and then something, to get other companies to do some things.

The CHAIRMAN. We do not require information on that subject, because everybody knows that.

Mr. MARTIN. Another objection, in my mind, to the statements made by these gentlemen was that this went too much into questions of detail; too much into the question of water glasses, and the question of fusible plugs, and things of that kind. What I would feel like contending for in this matter is the principle of the thing. If you could establish the principle of federal inspection of these locomotive boilers and leave the question of practical detail largely to some bureau, the Department of Commerce and Labor or the Interstate Commerce Commission or whatever bureau or commission of the Government may have charge of this matter, I think you could leave largely with them the question of the detail of the law. So that what I think the railway employees of the country ought to be interested in mostly, and what I think they are interested in, is rather the principle involved in this bill. But even in the matter of principle, I want to call your attention to the fact, and I think it is important, that there is nothing new in this measure.

Federal inspection now applies practically to every part of railway equipment except the locomotive. Several years ago Congress passed laws requiring the equipment of locomotives with driver brakes, the equipment of a train with air brakes, providing for their inspection, and requiring automatic couplers and the inspection of them, and only during this Congress we have passed a bill requiring and regulating the equipment of trains of cars with running boards, grab-irons, and handholds, and all that sort of thing, and providing for their inspection, so that as a matter of fact to-day the law provides for practically every feature of the equipment used by common carriers in moving interstate commerce with the exception of the boiler, and it would simply be extending the principle that has already been recognized and established by Congress in these bills to locomotive boilers.

I think it is obvious to everybody why it is necessary to have federal inspection of locomotive boilers, and why state inspection would not be sufficient. I do not believe the railroad companies themselves want state inspection, even if state inspection of the instrumentalities of interstate commerce would be permissible; and even if it were, it would not be practicable, because now a locomotive may be over here at the Union Station at Washington, and an hour from now it may be in Baltimore, and in two hours more in Philadelphia, and in two hours more at Jersey City, N. J., so that it would be just as imprac-

ticable and unsatisfactory to have state inspection of locomotive boilers as it would be to have state inspection in all these other equipments of engines and cars which are now subjected to federal supervision and inspection, by reason of the nature of the service and the fact that they are moved from place to place.

The bill that I introduced calls for a quarterly inspection of boilers. I do not believe, and the other gentlemen now, I think, do not believe, that a quarterly inspection is necessary. They believe that such an inspection would be cumbersome and burdensome and to a large extent unnecessary. The main thing in my judgment was touched upon by Mr. Wills a few moments ago in answer to a question of the chairman. The main thing is to have somewhere a power of inspection existing that may be called into requisition and used at any time. It has been stated to you that since the introduction of these bills there has been a marked improvement in the inspection and repair of locomotive boilers. It will not always be necessary for an inspector to personally inspect every boiler that may run out of a division point. The men know about these things. I can state to you from my own experience that many of these locomotives that are out of repair are well known to be in bad condition. A locomotive engineer can write a letter to a government inspector and bring him to the division point and have him inspect the locomotive.

Mr. RICHARDSON. Right there, do you think that the employees of a railroad company would write to the government agency?

Mr. MARTIN. Yes; I think so; when a locomotive became known to be in bad repair. There would not be near so much of it under federal inspection as there is now, but when instances of that kind did occur, I have no doubt but what the men whose lives were endangered by that condition, if the company did not take that engine out of service and repair it, would very quickly notify the federal inspector to come to that point and inspect the engine.

Mr. SIMS. Would not the man who did that be likely to lose his job?

Mr. MARTIN. No, sir; he would not. The railway men of the country are fairly well able to protect themselves in these particulars, and I do not think they have any apprehension on that score, or would charge that the railway companies would discharge their men.

Mr. WILLS. We do charge it; that they do do it.

Mr. SIMS. I was going to say that the gentleman a moment ago gave an instance of that sort.

Mr. MARTIN. I referred to notifying them under the federal law; but I will take the gentleman's statement on this proposition.

The CHAIRMAN. The time is up.

Mr. MARTIN. Just another word, Mr. Chairman. I have fired locomotives that had teats hanging like glove fingers from the crown sheet. I have fired locomotives when I was afraid to open the fire-box door to put in a shovel full of coal for fear she would blow down on me. We took chances and the railroad companies took chances, and they are human, and we are only human. But what we want now is a law that will limit this chance taking to a certain extent; and the very fact that you have such a law on the statute books, in my judgment, will remedy the present conditions to such an extent that there will not be a fraction of the federal inspection and

expense entailed that might be made to appear by some of the statements that have been put before the committee.

The CHAIRMAN. You believe in leaving the details to the railroads?

Mr. MARTIN. I believe in leaving the details of such a law very largely to the bureau or the department having jurisdiction of this matter. That is, they can work out the details of inspection, of what appliances ought to be used, and regulations for making inspection, and so on, and so forth.

The CHAIRMAN. Is there anyone here to be heard in behalf of the full-crew bill?

Mr. ROE. Not to-day, Mr. Chairman, that I know of. May we have a little further time to-morrow or some other day? General Uhler desires to be heard and two other gentlemen want to be heard briefly.

The CHAIRMAN. We have other bills on which gentlemen desire to be heard to-morrow, but we will hear you briefly to-morrow.

(At 11.45 o'clock a. m. the committee adjourned until to-morrow, Tuesday, May 17, 1910, at 10.15 o'clock a. m.)

[Extract from pages 136, 137, and 138 of hearing before subcommittee of Senate Committee on Interstate Commerce on March 3, 1910.]

Senator BURKETT. Mr. Chairman, I understand that the committee has decided they can not print this piece of evidence that was offered by the representative of the Norfolk and Western Railroad. It is the official report of the inspector for stay bolts. I think, perhaps, the committee is right in that decision, but I would like, just now, in the presence of the committee, to call attention to some things which this shows, which are vital to it, so that it may be in the record and may be put in in the presence of the committee.

I want to read what this is. This is instructions to the inspector [reads]:

"Each boiler is to have its stay bolts inspected every time it is blown out for washing which is to occur approximately every ten days. In making the inspection the inspector is to take a copy of this sheet (taking care to get the sheet representing the boiler he is inspecting) into the boiler with him. As he inspects each stay bolt and finds a broken one he is to make a cross mark on the circle in the diagram representing that stay. After completing the inspection he is to sign and date this report and turn it in to the proper parties.

"The foreman of the boiler makers is to order work done in accordance with the report herewith, and after the work is done is to sign his name and date in the proper place.

"Reports on this form are to be made only when broken stay bolts are found, whether they are renewed or not. If the stay bolts are found broken and not renewed, the fact should be so stated by entering 'Not renewed' in the place of the name for the boiler maker.

"In making reports of boilers inspected where no broken stay bolts are found, use Form M. P. 96.

"The foreman in charge is to inspect and see that the work is properly done and that the signature and date is in the proper place, and is then to arrange to take care of these reports on suitable file, preserving same so they may be used as evidence in court, if required. He is to make out two copies of the same, one of which is to be forwarded to the superintendent motive power and one to the master mechanic of the division on which the work is done.

"W. H. LEWIS,  
"Superintendent Motive Power.

"ROANOKE, VA., April 1, 1905."

I have read that to show what this is. Now, one of the contentions is that while they were investigated, the work is not done; the engines go out without the work being done.

Senator KEAN. It so states on there?

Senator BURKETT. Certainly.

This is the report of engine 961—all of these sheets [indicating]. Now, I want to call attention to what these sheets show, for the reason that it will then be in the record.



The first one shows here, 9/30/5, engine 961 was inspected and there were found 25 broken bolts. In two places there were a cluster of 3 bolts broken. On the reverse side it says "Not renewed, under the instructions," showing the engine went out.

The next is 10/20/5. The same engine was inspected and there were found 28 stay bolts broken. On the reverse side, to be signed by the boiler maker, it says "Not renewed." The next sheet shows an inspection, 10/24/5. They found 39 broken stay bolts; in one cluster, 7. That at that time was renewed. Then there are several other inspections which I do not care to call attention to as I go along. On the 13th day of May, 1907, this same engine was inspected; 8 stay bolts found broken. It says on the other side that they were not renewed. The next sheet shows 20 stay bolts broken, one cluster of 4 that was renewed. Now, on the 22d of June, 1907, this engine 961 was inspected. There were 4 stay bolts found; among those were No. 27 in row D and Nos. 26 and 27 in row C, of the right side and crown sheet. The next report was—I should say on the reverse of that former sheet it is said "Not removed." The engine was then inspected on the 20th of August, 1907, when there were 4 stay bolts found broken, but not the 4 that had been found broken before, and this plate does not show that these stay bolts in rows C and D on the right side were broken, but shows them to be perfect, but finds 4 other and different ones. On the reverse side of that it says "Not renewed."

The next inspection of this engine seems to have been on the 29th day of August, 1907, when there were 4 stay bolts found broken, the same 4 as were found in the last report. This report shows that they were not renewed. On the 7th day of September, 1907, the same engine was inspected again and only 2 stay bolts were found broken, and neither of these 2 correspond with any of the stay bolts found broken in the previous examinations, and the boiler maker certifies that they were not removed. On the 17th of September the engine was examined again, the next report is, and there were 5 stay bolts found broken, 4 of which correspond with two other examinations, being the second and third back. The report of the boiler maker is that they were not removed. On the 19th of October, 1907, the same engine was inspected and there were 5 stay bolts found broken, 4 of which correspond as before. The report is "Not renewed" by the boiler inspector.

Senator KEAN. How many stay bolts are there in that boiler?

Senator BURKETT. Twelve or fourteen hundred, the testimony is here.

Mr. FAULKNER. One thousand four hundred and sixty-four.

Senator BURKETT. The 7th of October, 1907, the same engine shows 3 stay bolts broken and the boiler maker's certificate is "not removed." The examination certificate for the 24th of January, 1908, shows 5 stay bolts broken, and the report is they were not removed. The 11th of February, 1908, shows 11 stay bolts broken, the report is "not removed." The 21st of February shows 10 stay bolts broken, and the report is "not removed." The 28th of December, 1908, shows 18 stay bolts broken, and the report shows they were not removed. The report for the 22d of January, 1909, shows 22 bolts broken, and the report shows they were replaced. The report for March 3, 1909, shows 13 stay bolts broken, and also shows they were not removed. The report shows stay bolts Nos. 10 in each of rows A, B, C, D in the throat sheet, right side, to be broken, "not removed." Report for 19th of August, 1909, shows that 27 stay bolts were broken, and shows that they were not removed. Of these 27, Nos. 10 in the rows A, B, C, D of the throat sheet, right side, were broken. The next report for the 16th of October, 1909, showed 67 plates broken, among which were Nos. 10 in rows A, B, C, D, E on the throat sheet for the right side of the engine. The report shows they were replaced.

Mr. WILLS. Mr. Chairman, General Uhler is here, and we would like, if possible, to give him a few minutes.

Senator CUMMINS. I am very sorry, but the Senate meets at 11.30 this morning, and I must be there. Do you desire to be heard orally, or will you file a statement?

Mr. FAULKNER. No; he desires to be heard orally.

Senator CUMMINS. Very well. We will close this hearing until to-morrow morning at 10 o'clock.

(Accordingly at 11 o'clock and 30 minutes the subcommittee adjourned.)

[Extract from pp. 149 to 153 of Hearing before Subcommittee of the Senate Committee on Interstate Commerce of March 3, 4, and 5, 1910.]

### STATEMENT OF WARREN S. STONE.

The CHAIRMAN. Your residence is Cleveland?

Mr. STONE. Cleveland, Ohio. I am grand chief of the Brotherhood of Locomotive Engineers.

The CHAIRMAN. Mr. Stone, you know the bill we have under consideration?

Mr. STONE. Yes, sir.

The CHAIRMAN. You may state what your views are about it.

Mr. STONE. I am familiar with the bill, and to set at rest any question regarding the bill, I want to state, as the chief executive of the organization representing 65,000 members, 58,000 of those in the United States, that the bill has the entire indorsement of the Brotherhood of Locomotive Engineers. They want the bill; and they are asking you gentlemen to give us this bill for our protection. We believe it is necessary. We believe we should have added protection of government inspection for the locomotives the members of this organization operate. It is impossible for us to bring to you much of the evidence that is in existence because of the quiet coercion which stands back of our men who operate these boilers. There are many facts known to all of us who have been in active service, and most of us speak from experience. I have had twenty-five years in a cab of a locomotive myself, but when you come to get affidavits or written testimony, they decline to give it, because of the quiet coercion that stands back of the whole thing; that he is a marked man, and he does not want to go on record. The bill, however, meets with the approval of our membership, regardless of any statement to the contrary.

Senator KEAN. The membership of the organization have never seen this bill.

Mr. STONE. I understand. The purport of the bill is the same. It provides for a government inspection of the boiler. That is what we are trying to get at; the details we are willing to leave to the committee to work out, but we want an inspection in words and not an inspection on paper, which is the case of the majority of our railroads to-day.

Reports are coming in to me almost daily and which I can not furnish for the reason that they say, "Do not use my name and get me into trouble." They say, "What are you doing down to Washington?" Our people have awakened up. We are having an inspection of our boilers; something we have never had before. Front ends are being opened to see if they are all right. Brick arches are knocked out of fire boxes and tested; something we have never had before. "What is the trouble?" I know of one road that has even gone to the extreme of knocking out a brick arch at every trip. Something absolutely unnecessary. Inspecting flues and testing stay bolts once a week instead of once in thirty days, as they used to. They have gone to the other extreme. They say to us, and the plea is made that there will be great delay of traffic caused by this added government inspection. If they are giving the inspection they claim to give to-day, and which, in the majority of cases we know they do not, there would not be any more delay to traffic under government inspection than there would be under the inspection they give at the present time. The claim is made that the engineer should be responsible. The engineer is placed in a peculiar position. He works under a large direction—if you will excuse the expression, it is not used in a spirit of sarcasm—petty officials who are anxious to make a record for themselves and who insist on keeping the operating expense down to the lowest cost because they are pitted against men on other divisions in the same class of condition, and if John Jones under certain conditions can operate his division at a less cost per mile than Bill Smith can on the other division they at once want to know why.

A few years ago—things go by fads in railroads the same as everything else—everything was open stay bolts. Open stay bolts or hollow stay bolts were a good thing, and when they cracked they spurted out. They always told you about it. Well, you come in and report "broken stay bolts." If they were in a hurry for the engine, the stay bolt was not replaced at all. The boiler maker went around and drove a plug into it, so it would not spurt any more. Engines are run to-day, not only on one railroad, but on many of them, with stay bolts leaking under the jacket. Our men are standing up in this cold, wet, winter weather drenched with water from the steam in the cab of the engine and the claim is made that they can not afford to take the engine out of service to make the repairs. Half has not been told in regard to broken stay bolts. It is nothing unusual to find 30 or 35 or 40 broken stay bolts at the end of thirty days on an inspection. I don't think any superintendent of motive power will correct me. I have seen 78 in one fire box myself at the end of thirty days. I think they will all agree, any of the locomotive-boiler constructors, or the men in charge of that department, will agree that the locomotive boiler has more and harder and different strains

upon it than perhaps any other type of boiler, owing to its peculiar construction. We will all agree that any man can tell when a boiler has collapsed from low water, but we have case after case where they say the engineer had low water, and he is discharged for it, and yet that company will refuse us the privilege of bringing in an outside boiler maker, who is an expert, to examine the boiler; will deny us that privilege. They simply say: "We have passed on it and that settles it. You can not bring in an outsider here to meddle with our business." We have cases every year that we are denied the right, and in one case I put an expert boiler maker into a boiler in the night. Stole him like a thief in the night to examine the boiler, and the superintendent of motive power told me the next day: "I wish I had caught him. I would have had him in prison for it." And they put a guard on the boiler to see that we put no more in.

This is something not only of importance to the members of the organization I represent but it concerns you gentlemen who ride on a railroad train. Do not lose sight of the man who is plugging along on a slow train who may blow up in front or behind of a passenger train on a double track. The danger is always present, not only in the engine pulling the train, but in any engine you may meet or pass, and I hope that you gentlemen, after you have listened to all the conflicting statements and testimony, will report favorably on this bill, which gives at all times an equal chance for the lives of the men we represent as compared with those in the operation of our marine service. That is all I care to say. Mr. Wills is here as the representative of the organization and has been in close touch with the bill all the way through. I have only kept in touch with it in a general way. He is our representative delegated by the organization to represent the interests of the order.

The CHAIRMAN. Do you desire to ask anything of Mr. Stone?

Mr. FAULKNER. I would like to ask, Mr. Stone, what is your judgment in reference to the suggestion made by General Uhler that engineers ought to be required to pass through expert examinations and be licensed before they handle a locomotive engine?

Mr. STONE. I am not in favor of an engineer being licensed. I am perfectly willing for an engineer to pass through any kind of an examination. In fact, there is no railroad in the country that does not require an engineer to pass through an examination.

Mr. FAULKNER. Don't you think that the Government should take control of the instrument that controls that boiler by giving him a license, and through proper examination?

Mr. STONE. This is the only objection to a government license—I know what you are getting at; you think perhaps that will be a boomerang on the bill, but I am perfectly willing to go on record—here is the objection to the government license: If the Government operated all the railroads and employed the engineers, I would say "Amen" to it; but if the government license goes into effect, and through some mistake—and the engineer is only human, he is not a machine, he may make a mistake, the best of men do—should he make a mistake and lose his license he is out of commission entirely, for all time to come. There is no chance for him to get back again. While under present conditions a man may have burned boilers on some of our best lines, and if they find he has had a previous good record he has been disciplined perhaps by discharge, or perhaps by sixty or ninety days' suspension, and has been returned to the service. That would be our objection to the government license; but so far as the examination of engineers is concerned, I do not think any government examination could be much more rigid than what we go through at the present time on examination.

Mr. FAULKNER. You don't think, then, the Government is operating the road, and by bills like this taking entire charge of operation?

Mr. STONE. I think the Government is entirely within its right in safeguarding the traveling public.

Mr. FAULKNER. Then, you don't think it is necessary, therefore, that he should be under a government license, just as well as the inspection of the boiler; that he should be inspected and have a license under such regulations as the board should prescribe as to his qualifications.

Mr. STONE. The mere fact that he carried a government license, I do not imagine, would insure the safer operation of the train. A man comes up to locomotive engineer through a long apprenticeship and classification, and I think that the American engineer will compare favorably with anything in the world, and a little more so, perhaps.

Mr. FAULKNER. He is a good man.

Mr. STONE. This is digressing for a minute. If there is anything in the theory of the survival of the fittest, it is the locomotive engineer. Out of 100 men who start as firemen only 17 become engineers. Out of every 100 men who do become engineers, only 6 reach a passenger engine.

The CHAIRMAN. Is there anyone else here who desires to be heard briefly?

Mr. WILLS. We would like, Mr. Chairman, to have Mr. Jeffery take the stand for a moment.

Senator CUMMINS. Is it in regard to these Norfolk and Western engines?

Mr. WILLS. It has been suggested that there be no reply to what has been said by the Norfolk and Western Railroad, and his remarks will be confined in a general way to the condition of boilers.

The CHAIRMAN. We have heard Mr. Jeffery once on this question. We must close this hearing this morning, but we will hear Mr. Jeffery until half past 11.

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WASHINGTON, D. C., *March 28, 1910.*

Mr. H. S. JEFFERY, *Washington, D. C.*

DEAR SIR: Agreeable to your request for a statement on my part as to what I know about the past and present condition of locomotive boilers, together with a brief statement about myself, would state that I am a practical boiler maker of ten years' experience in the construction and repairing of steam boilers, and have worked for the following railroads: Seaboard Air Line Railroad, Baltimore and Ohio Railroad, Norfolk and Western Railroad, Southern Railway, and the Louisville and Nashville Railroad.

I am at present employed by the Southern Railway and I am stationed at Birmingham, Ala., and have been in their employ for the past fourteen months; also worked for them several years ago for a period of thirteen months.

I know in a general way what practically every boiler maker knows and that is: Boilers are frequently in service when in an unfit condition, and it is the practice throughout the country, at least with the railroads that I have worked for, to plug the tell-tale holes of stay bolts when steam and water from within the boiler finds an outlet by means of them. When I was in the employ of the Baltimore and Ohio Railroad, which was in 1904, they furnished special plugs and tools for the purpose, and I have, in accordance with orders issued by the foremen, plugged holes to the extent of 30 in a single locomotive boiler in a month, and plugged in practically every locomotive boiler in service on that division from 5 up.

I was employed by the Louisville and Nashville Railroad in 1905, and was stationed at Birmingham, Ala., and while in their employ I saw a locomotive boiler with 72 broken stay bolts in one nest, and the sheet was bulged about 2 inches. I also saw a number of engines, or rather there were engines on that division, the boilers of which had from 30 to 100 broken stay bolts, and with nests of six to ten bolts, and the locomotives were practically in constant service. They were taken out of service for only a short period, and only long enough to remove a portion of the broken stay bolts—only sufficient to save the sheet from deformation.

Time and space do not permit stating at length or fully in regard to all that I have seen, but I do know that the "dope cure" is used extensively by railroads, and I further know that "fractured stay bolts" can not be found by the hammer test, and I have yet to see the man that can detect "fractured stay bolts" by the hammer test.

Regarding boilers that are so constructed that an internal inspection is impossible, would state that thirty-seven and thirty-eight hundred class of the Southern Railway are so constructed, and the other railroads as given above have many locomotive boilers so constructed, but I am unable to recall their class number.

When I was in the employ of the Seaboard Air Line Railroad I saw a locomotive boiler which had about 70 flues plugged with cast-iron plugs. In 1906 (I think that was in the time) I got into a little controversy at the Southern Railway shops, Birmingham, Ala., because of my remarks, etc., in regards to keeping in service a locomotive the boiler of which was not in good shape. This particular boiler had about 30 flues which had no bead, and the sheet had pulled away considerable; some of the flues were nearly out of the flue holes.

In the early part of 1910 on engine 3862, Southern Railway, in accordance with instructions, I made repairs that were not proper. An upright brace from a crown bar to the dome was found broken—or rather the rivets securing the palm of the brace to the dome body were leaking, and when an examination was made as to the cause, the broken brace as mentioned was found. Instead of fixing the brace it was let go and the holes in the dome body were plugged, and the boiler is in that condition now.

In the latter part of 1909 when working on engine 603 I plugged, in accordance with orders, a hole in the fire box tube sheet. A heel brace or called by some a "belly brace" was found leaking. I was assigned to replace the leaky bolt, but before I could complete the work as it should be, I was told the engine was needed, and in order to release the engine, the hole in the flue sheet was plugged; as far as I know the boiler is in service now minus one heel brace.

Yours, very truly,

O. A. CLARK.

WASHINGTON, D. C., *March 28, 1910.*Mr. H. S. JEFFERY, *Washington, D. C.*

DEAR SIR: The purport of this letter is to state that I am a practical boiler maker and have had twelve years experience in the construction and repairing of boilers. I have worked for the Big Four Railroad, the Southern Pacific Railroad, the Illinois Central Railroad, the Missouri Pacific Railway, and the Southern Railway, and I am working for them now at Columbia, S. C.

I agree with you that "fractured stay bolts" can not be found by the hammer test; that the tell-tale holes are plugged, also the flues—in fact, when I was in the employ of the Big Four Railroad, I saw a locomotive the boiler of which had about 125 flues plugged.

Regarding boilers in service with more or less broken stay bolts, would state that such practices were permitted; also boilers were in service when a great many of the flues had no bead. I have seen many boilers so constructed that an internal inspection is impossible, and agree with you that the jacket, etc., are not removed (only in special cases) when the locomotive comes in the shop for general repairs.

I also desire to state that I was in the employ of the Illinois Central Railroad and was assigned to put in a full set of radial bolts. I found that the bolts were so threaded that they would not tram, and when I reported same was told to stretch the bolts, or heat them and apply when hot. I refused to do either and after more or less talking on the subject, the matter was taken up with the master mechanic, but he appeared to be at sea as to whether to support me or the foreman, Mr. Tucker. In the meantime the inspector-general put in his appearance, and he supported the writer. Since you are a practical boiler maker, it is needless for me to explain the unmechanical method of heating and applying radial bolts, braces, etc., hot.

When I was in the employ of the Missouri Pacific Railway, Atchison, Kans., I was instructed to connect the boiler shell to the back end. I found that in the girth seam, or what is called the "roundabout" seam, that the number of holes did not agree, but the connection was made nevertheless. Of course, there were many partly "blind holes," and many other holes that were totally blind, but neither Mr. Jaquary, the foreman boiler maker, or the master mechanic, Mr. Miller, would listen to any protest on the part of others and myself.

Yours, very truly,

F. C. STOECKLER.

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LIST OF BOILER EXPLOSIONS SUBMITTED BY MR. JEFFERY.

Whereas Mr. Austin, of the Santa Fe Railroad, stated that I could not give a single instance of a boiler which "did blow up," I take the liberty to call attention to the following:

1. The crown sheet of a locomotive on the Salt Lake Railroad gave way, August 22, 1908, at Ontario, Cal. The engineer and fireman were slightly injured.
2. The boiler of a Delaware and Hudson locomotive exploded, August 22, 1908, at Cooperstown Junction, N. Y. One man was severely injured.
3. The boiler of a switching locomotive exploded, August 29, 1908, at Ann Arbor, Mich. One man seriously injured.
4. The boiler of a Denver and Rio Grande passenger locomotive exploded, September 2, 1908, near Thompson Springs, Utah, 75 miles west of Grand Junction, Colo. Engineer George A. Lund was fatally injured, and the fireman, Harry Ridell, was injured very badly, though it was thought he had a small chance of recovery.
5. The boiler of a Seaboard Air Line locomotive exploded, September 5, 1908, in the yards at Raleigh, N. C. Fireman Hugh Murchison was fatally injured.
6. The boiler of a San Antonio and Aransas Pass locomotive exploded, September 7, 1908, about 15 miles from Yoakum, Tex. Fireman Augustus Ryan and Head Brakeman Joseph May were injured and died later in the day. Engineer Z. W. Welch was also injured, but not fatally so.
7. A slight explosion occurred, September 19, 1908, on one of the New York, New Haven and Hartford Railroad's freight locomotives at Meriden, Conn. Engineer F. W. Kenyon and Fireman Robert Green were thrown from the cab and severely burned and bruised. So far as we can judge from the data at hand, the explosion consisted in the failure of one of the tubes.
8. The boiler of a freight locomotive exploded September 27, 1908, on the Chicago, Milwaukee and St. Paul Railroad, near Portage, Wis. Engineer Frederick J. Good was killed and Fireman Christopher Hanson and Brakeman B. N. Taylor were seriously injured.

9. The boiler of a freight locomotive exploded, October 1, 1908, on the Trenton Cut-off Railroad at Fort Hill, near Flourtown, Pa. Engineer A. K. Miller was injured so badly that he died soon afterwards. Fireman D. E. Parks and Brakeman W. T. Rowland were also injured seriously, but it was believed that both would recover. The property loss was estimated at \$10,000.

10. The boiler of a Southern Railway freight locomotive exploded, October 13, 1908, at Mayo, on the Atlantic and Danville division, some 40 miles from Danville, Va. Engineer James Pharr was killed and Fireman Frederick Smith and a Charles E. Massie were slightly injured.

11. The boiler of a Denver and Rio Grande locomotive exploded, October 18, 1908, near Carlton, 8 miles north of Colorado Springs, Colo., as the result of a derailment. Leonard F. Banker, who was serving as fireman at the time, was killed.

12. The boiler of a Colorado Southern freight locomotive exploded, October 22, 1908, near Kinder, La. The engineer and fireman and one of the brakemen were more or less injured, and it was believed that the fireman could not recover.

13. The boiler of locomotive 1966, drawing a milk train on the New York Central, exploded, October 28, 1908, near White Plains, N. Y. Fireman George Sommerville and Brakeman C. H. Traver were fatally injured, and Engineer C. J. Ranus was scalded, but will recover.

14. The boiler of a Lake Shore freight locomotive exploded October 28, 1908, near Elyria, Ohio. Engineer George P. Owen and Fireman J. C. Owen (his son) were fatally injured, and one of the brakemen was injured slightly. The locomotive was a total wreck.

15. The boiler of a freight locomotive exploded November 21, 1908, at Ripley, N. Y. Fireman Tucker was killed and Engineer William Mayer and Brakeman Wagner were scalded.

16. The boiler of a Missouri, Kansas and Texas freight locomotive exploded November 27, 1908, near Idenbro, 6 miles south of Parsons, Kans. Engineer F. E. Melville and Fireman F. F. Wolff were killed, and Brakeman C. E. Roe was fatally injured.

17. The boiler of a Chicago and Northwestern passenger locomotive exploded December 1, 1908, at Evanston, Ill. Fireman J. H. Wall was scalded and the locomotive was wrecked.

18. The boiler of an Ontario and Western freight locomotive exploded December 4, 1908, at Fair Oaks, 3 miles from Middletown, N. Y. Fireman William P. Kelly was injured seriously and perhaps fatally, and Engineer John Dougherty and Conductor George L. Knox were injured. The locomotive whose boiler exploded was almost completely demolished, and another locomotive, which was coupled to it, was thrown over an embankment and badly damaged.

19. The water leg of a New York Central locomotive ruptured November 5, 1908, near Ardsley, N. Y. Fireman Henry Wenn was seriously injured.

20. The boiler of a Lake Shore and Michigan Central passenger locomotive exploded November 9, 1908, at Chicago, Ill. Fireman Thomas Daly, jr., was scalded so badly that he died later in the day.

21. The boiler of locomotive No. 833 on the Delaware and Hudson Railroad exploded November 13, 1908, at East Windsor, N. Y., on the Nineveh branch. Brakeman John Carter and Fireman E. T. Bradshaw were killed, and the engineer, Calvin E. Kimball, and Conductor George Breese were injured.

22. The boiler of a freight locomotive exploded November 16, 1908, on the St. Louis and San Francisco Railroad, near Hayti, Mo. Brakeman Frederick Bossler was instantly killed, Fireman H. C. Brock was injured so badly that he died a few hours later, and Conductor J. H. Hathaway was fatally injured. Engineer Samuel Frissell was badly injured, but at last accounts it was thought that he would recover. Sixteen loaded box cars were demolished.

23. The boiler of a Southern Pacific freight locomotive exploded December 12, 1908, at Beaumont, Riverside County, Cal. Engineer David McDonald, Fireman Roy Reynolds, and Conductor Guy Brockman were instantly killed, and Head Brakeman E. A. Williams was seriously injured.

24. The crown sheet of a locomotive collapsed December 8, 1908, at the Caswell Creek colliery of the Pocahontas Consolidated Collieries Company, Simmons, W. Va. Engineer William Vincent, Machinist John Russell, and Brakeman Robert Muse, who were on the locomotive at the time, were injured.

25. The boiler of a freight locomotive exploded December 16, 1908, on the Chicago and Eastern Illinois Railroad at Goreville, Ill. The engineer was killed, and the fireman and the flagman were fatally injured.

26. A slight explosion occurred December 31, 1908, on the Rio Grande locomotive at Isabel, Tex. Fireman Juan Leica was terribly burned, and the engineer, whose name we have not learned, was also badly scalded.

27. The crown sheet of a locomotive boiler on the Atlantic Coast Line blew out April 3, 1909, at Charleston, S. C.
28. The crown sheet of a locomotive boiler collapsed April 4, 1909, at the Brule Mining Company's Chatam Mine No. 2, Stambaugh, Mich.
29. The boiler of a locomotive exploded April 9, 1909, on the Salt Lake Railroad at Cima, Cal.
30. The boiler of a locomotive drawing the Washington express on the Philadelphia and Reading Railroad exploded April 24, 1909, at Hamilton, 10 miles west of Bound Brook, N. J. Engineer Fred De Grof was injured so badly that he died shortly after the accident.
31. A tube failed, May 1, 1909, on a locomotive of the Lehigh Valley Railroad, at Bilbert, N. Y. Slight damage.
32. The boiler of a Wisconsin and Michigan Railroad freight locomotive exploded May 11, 1909, at Menominee, Mich.
33. On May 28, 1909, the boiler of North Coast Railway locomotive exploded at Marshall, Wash. One person was seriously injured.
34. The boiler of a Kansas City Southern Railway locomotive exploded June 15, 1909, at Hornbeck, La. Three men injured.
35. The boiler of a "Soo" passenger locomotive exploded July 2, 1909, at Eau Claire, Wis. Nobody was in the cab at the time.
36. The boiler of a Santa Fe Railroad locomotive exploded July 8, 1909, at Williams, Ariz. J. S. Watts was scalded so badly that he died a few hours later. (This explosion, as will be noted, occurred on the very railroad that Mr. Austin is connected with.)
37. The boiler of a freight locomotive exploded September 8 at Ellensburg, Wash. One man was fatally injured and two others were injured severely but not fatally.
38. The boiler of a Canadian Pacific locomotive exploded September 22 at St. Augustin, near Montreal, Quebec. Fireman Edward Edwards was instantly killed.
39. On October 11 a boiler belonging to the Chicago, Burlington and Quincy Railroad exploded at Forest City, Ill. One man was fatally injured.
40. The boiler of a donkey engine exploded October 13 at the Lake Whatcom Logging Company's Camp 4, near Bellingham, Wash. Fireman John Larson and Engineer George Beckwith were badly injured and were conveyed to the hospital at Bellingham, where Larson died.
50. On October 16 an eastbound passenger train on the St. Louis and San Francisco Railroad was wrecked near Tahlequah, Okla. As a result of the wreck the boiler of the locomotive exploded, killing Engineer A. P. Vance.
51. The boiler of a freight locomotive exploded October 24 about a mile from Gano Station on the Big Four Railroad, 20 miles north of Cincinnati, Ohio. Oscar Pease and Charles Wycoff were killed outright and Granville Fuller was fatally injured. Two other men were also injured, more or less seriously, but not fatally.
52. The boiler of a Trinity and Brazos Valley Railroad freight locomotive exploded October 27 at Pearland, Tex. Engineer M. E. Tarver, Fireman W. M. Murchison, and Brakeman F. Leach were seriously injured.
53. The boiler of a Grand Trunk locomotive exploded October 29 at Montreal, Canada. One man was fatally injured and three others received lesser injuries.
54. The boiler of a freight locomotive exploded October 30 on the Coal and Coke Railroad near Yankee Dam, 46 miles from Charleston, W. Va. Engineer John Rogers, Firemen W. E. Carruthers and T. J. Finley, Conductor James Riddle, and Brakeman R. B. Thomas were instantly killed and Brakeman Charles Patten was seriously injured.
55. The boiler of Lake Shore locomotive No. 5948 exploded October 31 just east of Geneva, Ohio. Fireman A. E. Crawford was instantly killed and Engineer Harry Braymer was badly injured.
56. The boiler of a freight locomotive exploded November 6 on the New York Central Railroad at Belmont, near Hornell, N. Y. Engineer Chauncey C. Green and Fireman Christopher Rider were instantly killed and three other men were injured. The freight train was wrecked as the result of the explosion.
57. The boiler of freight locomotive No. 777 of the Seaboard Air Line Railroad exploded November 14 between Richmond, Va., and Petersburg. Engineer C. Ennis was seriously injured and died within a few hours.
58. The boiler of a locomotive belonging to the New York Central Railroad exploded November 17 at Buffalo, N. Y. One person was injured fatally and two others severely, but not fatally.
59. The boiler of freight locomotive No. 2046, of the Chicago, Burlington and Quincy Railroad, exploded November 18 at Lincoln, Nebr. Fireman George Meecham was instantly killed and Engineer George Pierce and Brakeman Upton were seriously injured.

60. The boiler of a locomotive used in connection with a construction train exploded November 19 5 miles west of Newcastle, Ind. Engineer Edward Walters was instantly killed and Fireman Glessie Davison was seriously injured.

61. The boiler of a locomotive exploded November 20 on the St. Louis and San Francisco Railroad near South Greenfield, Mo. William O'Brien was injured so badly that he died on the following day.

62. On December 6 the crown sheet of locomotive No. 208, of the Denver and Rio Grande Railroad, collapsed at a point 25 miles north of Santa Fe, N. Mex. Fireman Kincaid was injured.

63. The boiler of a Denver and Rio Grande locomotive exploded December 8 at Blanca, 18 miles east of Alamosa, Cal. Fireman W. B. Chase and Brakeman Joseph Wetsenberger were injured, and the former died of his injuries a few hours later.

64. On December 16 the boiler of locomotive No. 476, of the Chicago, Milwaukee and Puget Sound Railroad, exploded at Miles City, Mont. Engineer James M. Marker, Fireman Frank H. Walters, and Brakeman James E. Bowman were badly injured. Walters died two days later, and at last accounts it was thought that both of the other injured men might die.

65. The boiler of a Baltimore and Ohio locomotive exploded December 18 at the foot of Clark avenue, Cleveland, Ohio. Fireman Thomas Klindel was badly injured.

66. The boiler of locomotive No. 140, of the Rio Grande Western Railroad, exploded December 19 at Salt Lake City, Utah. Fireman L. M. Strick and Brakeman H. B. Williamson were seriously injured.

67. A locomotive boiler exploded December 24 in the repair shop of the Chicago, Rock Island and Pacific Railroad at Shawnee, Okla. Robert Kerr, John Johns, and a boy whose name was not known were killed, and 13 others were more or less severely injured. The shop was almost totally wrecked, and the property loss was estimated at \$100,000.

NOTE.—All the above will be verified by the Hartford Steam Boiler and Inspection Company's official reports.

#### STATEMENT OF FACTS.

WASHINGTON, D. C., *March 18, 1910.*

TO THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*House of Representatives.*

GENTLEMEN: Appreciating that the committee is very busy and that a written statement will serve my purposes very well, the writer hereinafter sets forth many reasons why the Federal Government should inspect locomotive boilers. The paper's title is "Statement of facts," and so named, as subjects taken up relate to testimony offered by both sides.

The bill H. R. 22066 was drafted by the Attorney-General, who was aided by suggestions by those that believe and know that if the bill becomes a law the lives and limbs of railroad employees and the traveling public will be safeguarded. It is needless to state that the Hon. William H. Taft would not look with favor upon this bill if it did not mean anything, as the railroad companies allege.

#### APPURTENANCES.

The opposition at the hearing, January 28 and 29, laid great stress that the water glass, an appurtenance, was not necessary. However, they admit that 85 per cent of all locomotives are equipped with them, and I submit three reasons why every locomotive boiler should be so equipped. The other appurtenances need not be considered, as both sides agree that they are necessary.

The federal boiler-inspection bill has been attacked by some parties, stating that certain fixtures are unnecessary. The water glass appears to be a target, but its use is of more value than the gauge cocks. If it serves no purpose other than to aid the fireman to keep "tab" on the height of the water, it should not be discarded, but it also serves the following purposes:

- (1) Determines the height of the water when the gauge cocks become stopped up.
- (2) Determines the height of the water between two gauge cocks. Gauge cocks are usually 3 inches apart; thus the water glass shows actually the height of the water, while the gauge cocks do not.
- (3) When the water within is foaming, the water is lifted when the throttle is open, and when closed the water drops. When the water within the boiler foams, a careful



watch must be maintained, noting the lifting and drop, and the water glass is very essential in order to make close observations. There are other equally good reasons, but the foregoing will doubtless suffice to show the need of the installation of the water glass.

#### TIME REQUIRED FOR INSPECTION.

Mr. Theo. H. Curtis, superintendent of machinery, Louisville and Nashville Railroad, at the hearing, January 28, stated that the time for a thorough inspection ranged from "three to ten days," whereas Mr. Kendrick, vice-president in charge of operation of the Atchison, Topeka and Santa Fe Railway, stated to the Senate committee: "To thoroughly inspect a single locomotive requires about one day."

I agree with Mr. Kendrick that the inspector will average an inspection a day, but the "actual time" inspecting the boiler will not exceed five hours. The majority of locomotive boilers are inspected in about fifteen minutes, and is a "farce" in the fullest sense of the word.

#### INSPECTOR-GENERAL'S SALARY.

It would seem that when a person sets out to defeat a certain bill he would use what is commonly called "horse sense." Mr. Kendrick, who spoke in opposition to the bill, said, among other things, the following:

"Any man who is fitted to occupy the position of inspector-general within the meaning or intent of this bill can obtain a much larger salary in the service of a locomotive manufacturer or a railroad. The salaries that it is proposed to pay to the supervising inspectors are inadequate to secure men who are capable of filling these very important positions, and this provision of the bill alone will make it impossible to obtain men who can properly pass upon designs involving intricate computations and thorough knowledge of the properties of materials entering into the construction of boilers, all of which matters have been considered and determined by thoroughly trained specialists. It is manifestly improper to give to any but thoroughly competent men the right to condemn the work of other men who are thoroughly competent.

"Senator CUMMINS. I want to ask just one question. What do you pay to your chief boiler inspector or general inspector?

"Mr. KENDRICH. Two thousand five hundred dollars a year."

I am sorry that Mr. Kendrick views his inspector-general so lightly that he does not feel justified in paying him the salary that he (Kendrich) says that a competent man could and should receive. Mr. Kendrick, by his own testimony, admits the inefficiency of his inspector-general, but he says, notwithstanding the above statement, that their inspection is thorough; but that can not be when he has a force that he himself rates as incompetent.

Before I pass from this subject I wish to call attention to a part of the testimony before the Senate committee of Mr. J. D. Harris, general superintendent of motive power, Baltimore and Ohio Railroad Company. It is as follows:

"Section 4 states that the man in general charge of this enormous job shall receive a salary of \$5,000 per year, and I just want to say that the figure named is not sufficient to obtain a man fitted by training or experience for work of this character. Such a man is in daily demand by the railroads and locomotive builders at three times the salary named.

"Section 5 states that the officers in charge of the districts shall receive a salary of \$3,000 per year. Men competent to pass judgment on such matters as design and strength of boilers or the material used in the construction must be men of good technical training and experience. Surely you can not obtain such men of experience for this figure, and unless competent men are in charge what assurance have the railroads or the public that the boilers are safe for operation?

"Section 8. It would appear that it is the idea to make rules governing the inspection uniform on all roads and in all parts of this country. This part, in itself, shows the impracticability of the bill, the unfairness to the railroads, and the lack of knowledge of conditions by those who had to do with framing the bill. Conditions in sections of the country differ so much in boiler operation that the rules must be made and applied to suit the conditions. In this I refer more particularly to water and its effect on the life of the boiler and its parts.

"Section 9. The number of inspectors is limited to 300. This number, if inspecting under this bill as we interpret it, will not cover one-third of this country.

"I note that the local inspectors must be able to form a reliable opinion of the strength of the boiler and its workmanship, suitability of the form, design, and its arrangement, etc., and these men are to be selected from the boiler-maker class. I

certainly would not rely on any boiler maker of my acquaintance to pass on such questions for me outside of the workmanship."

Mr. Harris, as will be noted, says, speaking of the inspector-general: "Such a man is in daily demand by the railroads and locomotive builders at three times the salary named."

The salary named in the bill for the inspector-general is \$5,000 per year, which is little enough, but Mr. Harris knows that there is not a railroad or a locomotive builder who pay their inspector-general of boilers \$15,000 a year. The truth is they do not pay one-half that amount, and you can safely bet that Mr. Harris would raise a big "yell" if the Baltimore and Ohio Railroad paid to their inspector-general of boilers a salary greater than he himself receives.

I desire to direct attention to a letter signed by six men each of whom holds a position as head of the boiler work of the respective railroads that employ them. None of the signers of the letter referred to receive a salary exceeding \$3,000 a year, and one or two of them do not receive over \$2,000 a year. The letter referred to is as follows:

STATEMENT OF GEORGE AUSTIN.

Senator CUMMINS. Very well, Mr. Austin. First, let the reporter take your name and residence and connection with the railroad business.

Mr. AUSTIN. My name is George Austin. My residence is Lawrence, Kans. My occupation is that of chief boiler inspector of the Santa Fe Railroad system. I would like to say also for the benefit of the committee, Mr. Chairman, that I have had more than thirty-seven years' experience in this line of work with some of the principal railroads of the United States, the Pennsylvania, Northern Pacific, Wabash, Texas Pacific. At present I am with the Santa Fe road [reading]:

"WASHINGTON, D. C., March 4, 1910.

"MR. CHAIRMAN AND MEMBERS OF

"SUBCOMMITTEE OF COMMITTEE ON INTERSTATE COMMERCE,

*"United States Senate, Washington, D. C.*

"GENTLEMEN: We have carefully considered the testimony in connection with bill S. 6702, and beg to submit the following reasons why this should not become a law.

"We have noted that the principal argument for the internal inspection of all locomotive boilers every twelve months has simmered down to two reasons, one of which is that for the sake of safety of employees and the traveling public the flues should be removed and the shell of the boiler inspected once each year, and the other reason is the claim that the boiler can not be inspected for partly broken stay bolts unless the interior is inspected, which can be done only by removing the flues, and this is to be done once in each twelve months. As to the matter of the internal inspection of the boiler, the undersigned are of the opinion that the life of the flues is the best barometer on which to base the period of time at which a locomotive boiler requires internal inspection. The flues are subject to the same adverse conditions as the boiler as regards water and the strains due to the varying temperatures, and, being of lighter material, they are the first to show weakness, and of necessity must be the first to fail; consequently, the life of the flue is a reliable factor on which to base the period for internal examination of the boiler.

"Referring to the defective stay bolts, or the feature of partly broken bolts, as being the most prominent reason that has been advanced for the annual internal inspection. It has been testified before this committee that stay bolts are tested with the hammer and a man holding on to the bolt on the outside with a dolly bar and that by this means a stay-bolt tester is able to tell by the sound whether or not a stay bolt is broken. We beg to present to the committee this testimony: That the use of a dolly bar and an assistant to test stay bolts in a locomotive boiler has been discarded long ago in favor of the hammer test only, as the latter has been found to be more accurate, and the dolly bar practically useless. This being the case, it is not necessary to dismantle any locomotive boiler for the purpose of testing stay bolts, for with the hammer alone, which practice is general throughout the country at the present time, we are able to detect all broken or fractured stay bolts, and it is the general practice all over the country not to allow a boiler to remain in service with two or more adjacent broken bolts. We inspect for fractured bolts and remove the same, where found, until all defective bolts are removed. It is no assistance in detecting broken and fractured bolts to have the flues removed, because the construction of the locomotive boiler does not make it possible to make anything like a thorough internal inspection for fractured and broken

bolts, except of a very small percentage of those bolts located in the immediate vicinity of the forward part of the fire box; the rear part of the fire box being completely inaccessible and obscured.

"In view of the fact that locomotive boilers are usually constructed with a factor of safety of from  $4\frac{1}{2}$  to 6—in other words, that the materials are strained only from one-sixth to one-fourth of their ultimate strength—we do not consider it unsafe for a boiler to have a number of broken stay bolts, provided the broken bolts are widely scattered or distributed among those that are not broken. However, we find from our regular periodical inspections that this does not occur, and the fact that our boilers do not explode by reason of broken stay bolts and that the fire-box sheets do not show indication of bulging to speak of, is, in our opinion, positive proof that boilers of locomotives in service are not in defective condition and that our methods of inspection are efficient, and at this time we can not see any better method that will increase the safety.

"The art of testing stay bolts is not readily acquired by all boiler makers, and even among those who do acquire it some are more expert than others, and a good stay-bolt inspector has some natural talent for the work—the sense of either hearing or feeling, or both—that enables him to develop rapidly in the art. It is within the bounds of truth to state that not more than 5 per cent of the boiler makers working at the trade to-day are capable of reliably testing stay bolts in locomotive boilers. Therefore, we recruit from our ranks those men who seem most likely to develop into capable stay-bolt testers.

"Whenever a locomotive is found with broken stay bolts, or any other defects are reported in the boiler or fire box, it is ordered out of service and held until repairs are made and the work approved by us. In this action we have in all cases received the full cooperation of our superior officers.

"As men in charge of the boiler work on our respective railroads, we wish to state that from years of experience in this particular work, we know almost at any time on any class of locomotive boiler with which we may be brought into contact, where to first look for defects, and by the records we keep of the periodical inspections, we readily keep track of the boilers, and our knowledge and experience are sufficient to insure the safety of our boilers and their proper care and maintenance, and we again refer to the fact that as we have practically no boiler explosions on account of defective boilers, it is evidence of our success.

"It has been charged that in some cases crown sheets give way on account of broken radial stays or crown bolts. In all our investigations we have not seen a case of this kind. The only giving way of crown sheets with which we have met has been due to one cause alone, namely, neglect on the part of the person in charge of the boiler to keep it properly supplied with water.

"We consider that it is not necessary to remove flues annually in order to inspect the interior of the barrel of the boiler, from the fact that from our years of experience we know that the boiler shell does not deteriorate materially in less than from 10 to 15 years after the date of its construction. Therefore, it is not necessary to remove flues for the purpose of inspecting the interior of the barrel of the boiler at times other than when flues are removed on their own account.

"We do not consider it necessary to dismantle our boilers for the purpose of making annual inspection of the exterior of the boiler, for the reason that we know that defects are not found on the exterior of the boiler, except in such cases where steam leaks develop, which are exceptional and usually of very slight importance. As a general proposition, we consider it unnecessary to remove the jacket and lagging, except in cases of renewal of fire boxes or repair of leaks of steam that have developed. However, when locomotives go into shop for general repairs, the periods of such shopping varying from ten to sixteen months, the boilers are usually stripped inside and outside.

"Considering the fact that to-day the railroads of the country have in their employ the most capable men who can be procured and who are selected for such positions because their years of experience and training along special lines have qualified them to look after the safety and efficiency of locomotive boilers, it is our judgment that the enactment of such a bill would not afford greater safety to our employees and the traveling public than exists to-day. On the other hand, we believe that the passage of such a bill would tend to impair the efficiency of our present organization and in some cases would bring a disturbing element between the workmen and their superior officer. Some of the present force of the railroads might consider the enactment

of a law of this kind as relieving them in a measure of the vigilance now being exercised in the discharge of their duties, thinking that the federal inspectors would assume the responsibility, for which, however, this bill does not provide.

"Respectfully submitted.

"ARTHUR E. BROWN,  
"General Foreman Boiler Department, Louisville and Nashville Railroad.

"GEO. AUSTIN,  
"Chief Boiler Inspector, Atchison, Topeka and Santa Fe.

"J. A. DOAMBERGH,  
"General Master Boiler Maker, Norfolk and Western Railway.

"C. E. ELKINS,  
"Foreman Boiler Makers, Missouri Pacific Railroad.

"B. T. TARVIR,  
"Foreman Boiler Makers, Pennsylvania Lines West of Pittsburg, Fort Wayne, Ind.

"T. J. MCKERIHAN,  
"Foreman Boiler Makers, Juniata Shops, Pennsylvania Railroad."

I desire to direct your attention to a statement in said letter, which is:

"Whenever a locomotive is found with broken stay bolts, or any other defects are reported in the boiler or fire box, it is ordered out of service and held until repairs are made and the work approved by us. In this action we have in all cases received the full cooperation of our superior officers."

The above statement is well worded, but reference is made to only "broken stay bolts"—not a word is said about fractured stay bolts. The assumption is that "fractured stay bolts" come under the classification of "other defects," but as "fractured stay bolts" can only be discovered by an internal inspection, which the railroads admit is not made, they are not reported, and of course not removed.

The statement about removing the "broken stay bolts" promptly is not a fact. As will be noted, the letter referred to is signed by Mr. J. A. Doambergh, general master boiler maker, Norfolk and Western Railway. In an attempt on their part to discredit Mr. Oren Ruefley, who told about their malpractices, they submitted to the Senate committee the official records of engine 961, and when examined by Senator Burkett the following came to light:

"Senator BURKETT. This is the report of engine 961—all of these sheets [indicating]. Now, I want to call attention to what these sheets show, for the reason that it will then be in the record.

"The first one shows here, 9/30/5, engine 961 was inspected and there were found 25 broken bolts. In two places there were a cluster of 3 bolts broken. On the reverse side it says 'Not renewed, under the instructions,' showing the engine went out."

"The next is 10/20/5. The same engine was inspected and there were found 28 stay bolts broken. On the reverse side, to be signed by the boiler maker, it says 'Not renewed.' The next sheet shows an inspection, 10/24/5. They found 39 broken stay bolts; in one cluster, 7. That at that time was renewed. Then there are several other inspections which I do not care to call attention to as I go along. On the 13th day of May, 1907, this same engine was inspected; 8 stay bolts found broken. It says on the other side that they were not renewed. The next sheet shows 20 stay bolts broken, one cluster of 4 that was renewed. Now, on the 22d of June, 1907, this engine 961 was inspected. There were 4 stay bolts found; among those were No. 27 in row D and Nos. 26 and 27 in row C of the right side and crown sheet. The next report was—I should say on the reverse of that former sheet it is said 'Not removed.' The engine was then inspected on the 20th of August, 1907, when there were 4 stay bolts found broken, but not the 4 that had been found broken before, and this plate does not show that these stay bolts in rows C and D on the right side were broken, but shows them to be perfect, but finds 4 other and different ones. On the reverse side of that it says 'Not renewed.'

"The next inspection of this engine seems to have been on the 29th day of August, 1907, when there were 4 stay bolts found broken, the same 4 as were found in the last report. This report shows that they were not renewed. On the 7th day of September, 1907, the same engine was inspected again and only 2 stay bolts were found broken, and neither of these 2 correspond with any of the stay bolts found broken in the previous examinations, and the boiler maker certifies that they were not removed. On the 17th of September the engine was examined again, the next report is, and there were 5 stay bolts found broken, 4 of which correspond with two other examinations, being the second and third back. The report of the boiler maker is that they were not removed. On the 19th of October, 1907, the same engine was inspected and there were 5 stay bolts found broken, 4 of which correspond as before. The report is 'not renewed,' by the boiler inspector.

"Senator KEAN. How many stay bolts are there in that boiler?

"Senator BURKETT. Twelve or fourteen hundred, the testimony is here.

"Mr. FAULKNER. One thousand four hundred and sixty-four.

"Senator BURKETT. The 7th of October, 1907, the same engine shows 3 stay bolts broken and the boiler maker's certificate is 'not removed.' The examination certificate for the 24th of January, 1908, shows 5 stay bolts broken, and the report is they were not removed. The 11th of February, 1908, shows 11 stay bolts broken, the report is 'not removed.' The 21st of February shows 10 stay bolts broken, and the report is 'not removed.' The 28th of December, 1908, shows 18 stay bolts broken, and the report shows they were not removed. The report for the 22d of January, 1909, shows 22 bolts broken, and the report shows they were replaced. The report for March 3, 1909, shows 13 stay bolts broken, and also shows they were not removed. The report shows that stay bolts Nos. 10 in each of rows A, B, C, D in the throat sheet, right side, to be broken, 'not removed.' Report for 19th of August, 1909, shows that 27 stay bolts were broken, and shows that they were not removed. Of these 27, Nos. 10 in the rows A, B, C, D of the throat sheet, right side, were broken. The next report for the 16th of October, 1909, showed 67 plates broken, among which were Nos. 10 in rows A, B, C, D, E on the throat sheet for the right side of the engine. The report shows they were replaced."

The official records show conclusively that the statement, to wit: "And it is the general practice all over the country not to allow a boiler in service to remain in service with two or more adjacent broken bolts" is false. The official records show that engine 961 was in service with seven bolts in one nest; in another instance with four broken bolts in one nest; and the official records show that the boiler was in service almost constantly with broken stay bolts, and the fact was known by the proper official.

When you read what the official reports show of engine 961 you read what all the official reports would show if they were placed before you for inspection. It is a safe bet that before the railroads offer other official records they will thoroughly inspect them, even if they do not their boilers.

At the first annual convention of the Master Steam Boiler Makers' Association held October, 1902, Mr. Smythe (then foreman boiler maker, Chicago and Alton Railroad, Bloomington, Ill.) made the following statement:

"I worked for a certain railroad as journeyman, and we had boilers there from which we never did take out all the defective bolts; and I was told that if I found one-half, two-thirds, or seven-eighths of the bolts good, it was all right. Since I have been foreman I have given instructions to take them all out. On the other hand, we may as well face the question here. We may say that we take them all out, but do we? I am just about as rigid on broken stay bolts as anybody I have ever met, and I have found but one man that knew anything about broken bolts, and he knew nothing. I have good experienced men at it; we have tested them with cold water and have not found a partly broken or fractured bolt."

Please note that Mr. Smythe says that when he was employed as a journeyman he was told "it was all right" to pass boilers with broken stay bolts. Then he asked the question: "We may say that we take them all out, but do we?" This statement shows actual conditions. Special attention is directed to his statement that partly broken or fractured bolts can not be found by the hammer test. They can only be discovered by an internal inspection, which the railroads do not make in many cases.

At the same convention, Mr. Wolfenden (then foreman boiler maker, Chicago, Milwaukee and St. Paul Railroad, Milwaukee, Wis.) made the following statement:

"I have been inspector for a number of years for the St. Paul and Canadian Pacific. I say, where a stay bolt is unsatisfactory, it should be removed at once. When it is broken, put in a new one; if they are in pairs, the strain will come on the new bolt.

"A certain road in Delaware—on making a test, I found two bolts broken on the face plates. We fixed them solid, and after that the engine blew up and killed the engineer, fireman, and conductor. When the engine came back we used extreme care in examining it, and we found that a bolt on the back end had been broken. We went to the other extreme after that and took out every bolt. If we had discovered that at first, those three men would not have lost their lives."

From Mr. Wolfenden's remarks we learn that three men lost their lives and because a complete inspection was not made. This and other evidence, should, gentlemen, show the need of federal inspection of locomotive boilers.

Mr. Austin, of the Santa Fe Railroad, before the Senate committee, in an attempt to upset my remarks made the following statement:

"I have in my experience done a great deal of roundhouse work. I have gone into locomotive fire boxes to make repairs, when steam was blowing and water squirting. The question of the steam pressure cut but little figure. I would light a piece of oily

waste and throw it in on the grates and see in what direction the steam jet or water was coming from and then if I could I would get in and if it was practical to do so, stop the leak. I was not compelled to do this; that was a matter that was left entirely to my judgment. If I thought it was necessary to have the steam blown off and the pressure reduced on a boiler, there never was any question about it. I never was asked or never have asked anyone, and there is no one in authority who ever will ask a man to go into a place of danger for the purpose of doing work on a locomotive boiler. I mention this for the reason that I note that Mr. Jeffery makes quite a point in his statement when he claims that men had to use shields to get into a fire box to calk a leak."

Unquestionably he admits the existing conditions which this bill aims to correct. He says, "And then if I could I would get in." Indeed, but many a boiler he has seen during his years of experience was such that he nor anyone else wanted to go inside the fire box, the boiler under steam pressure, though men had to go inside the fire box to stop the leaks or otherwise look for another position.

He admits they leaked so bad that he ascertained "what direction the steam jet or water was coming," etc., before he went inside the fire box. This shows steam and water was flying in all directions, and that instead of fixing the boilers properly the leaks are stopped so the engine can "make another trip."

He also states he went inside the fire box of his own accord, and now the question is, Why did he go in and take such chances? The answer is, because the engine was wanted, and he knew it; therefore fixed her up for "another trip," and he also knew that if he refused to "go in" some one else would be engaged who would "go in."

He reminds me of a case where a party said he would not do a certain thing "until he got good and ready," whereupon the party addressed got a "six-shooter," and then the first party said, "I am good and ready now."

At the annual convention of the Master Steam Boiler Makers' Association in 1906, Mr. F. P. Roesch, master mechanic, Southern Railroad, Birmingham, Ala., made the following statement:

*"Improper repairs.*—To this factor we can attribute fully 20 per cent of our failures. These improper or halfway repairs usually are made in the roundhouse, and are due to the chronic shortage of power prevailing on most railroads at some time during the year. The call for power as fast as it can be furnished leads to many jobs being slighted; jobs that may be absolutely necessary at the time, and which the foreman considers can go for another trip, figuring on catching them next trip when he is not so busy. But, unfortunately, this slack time never comes; consequently the job is put off from trip to trip until finally it results in failure.

"These halfway repairs refer not only to the machinists, but to the boiler makers; many a time have you fullered up a crack in a side sheet when it should have been plugged; many a time have you expanded a leaky flue with a taper pin when it should have been rolled or beaded. If you watch the matter closely you can see these jobs every day."

I would state, gentlemen, that Mr. Roesch's statement represents the conditions that exist. Leaky flues are stopped for the time being as he sets forth, or else are plugged by inserting a cast-iron plug. The conditions are horrible, and I trust all this evidence will show the need of the bill becoming a law.

Mr. C. Richards in a paper read before the Northern Railroad Club, January 1909, made the following statement:

"Patches on the fire box do not wear as well as they should, because the engines are hurried through the roundhouse, and no more time is taken than absolutely necessary to calk them so as to get the engine out of the shop dry. It is the writer's custom, if the patch is leaking badly, to let the water out of the boiler and calk the patch bolts and seams thoroughly, avoiding chippings as much as possible, as this shortens the life of the patches."

It matters not the locality, it is the same old story: "Hustle," "Get her out," "Give her a lick and a promise to do better to-morrow," but "to-morrow" never comes. We have it from all sides how the property of the stockholders and bondholders is abused and destroyed, and how the taking of lives is considered just a "mere incident."

In a paper read before the International Railroad General Foreman Association, June, 1909, Mr. J. P. Morrison made the following statement:

"There is no line of work connected with the sheet-metal trades which requires better judgment, a more thorough knowledge of conditions, and more ingenuity than does the repairing of old boilers, and this is especially true when the parts repaired are located where they receive the direct impact of the heat. Such is the case with locomotive fire-box repairs. Usually the best mechanic available is given this work; but there are cases where out-of-ordinary conditions exist calling for greatest care and foresight, and the opinions of others is called for before a satisfactory solution is reached. The work described in this article is of the nature referred to, and while

in shops with full equipment for handling work of this kind the repair would have been comparatively simple, in the shop in which the work was done no other method was possible without serious delay, and the contract for making the repair was secured on a promise of quick work.

"The work was necessary on account of the side sheets of the fire box cracking between the stay bolts. These cracks had been calked with fullers, chisels, and center punches until the sheets presented an unique appearance, the cracks in the meantime gradually extending to the next stay bolt, and then to the next, until patching was the easiest way out of the difficulty."

The second paragraph tells of conditions that could not exist if locomotive boilers were inspected by federal inspectors. Note how the cracks were calked up, the boiler "in service in an unfit condition," and when it could go no longer the repairs were made; but when made "quantity instead of quality" was sought.

At the Master Steam Boiler Makers' Association convention, Chicago, June, 1905, Mr. P. J. Conrath, then traveling boiler inspector, Missouri Pacific and Iron Mountain Railroad, St. Louis, Mo., made the following statement:

"I wish to say, gentlemen, in regard to roundhouse work that it is a very important subject. I could speak for an hour and then not do it justice; but I will try to limit my talk to five minutes and go over the thing in a few words. First, the washing should be looked after properly. An engine brought into the roundhouse with 130 or 140 pounds of steam on, blowed down to 50 or 60 pounds of steam, the blow-off cocks working, the water and steam blowing off at the same time, and then filling the boiler up with cold water immediately afterwards. We all know that such proceedings would produce such a contraction that it would crack anything. That is the way it is done in nine-tenths of the railroad shops to-day."

Please note, gentlemen, that Mr. Conrath charges willful abuse of the locomotive boilers by petty railroad officials, and the practice he makes mention of exists in "nine-tenths of the railroad shops to-day." He is right, and I speak from personal knowledge.

Mr. Conrath, in the course of his remarks, also said:

"I am not in favor of calking up cracks in a fire box. I think where a crack exists in a fire box and you get in with a calking tool, then fuller over the crack, you will make a job that will get the engine out of the roundhouse, but not over the road. I think it should be patched."

I say, gentlemen, "Read, think, and then, for the sake of safety, act."

At the General Foremen Convention, Chicago, May, 1908, Mr. G. E. Bronson, Chicago, Rock Island and Pacific Railroad, made the following statement:

"Who should determine when to stop an engine? And who should furnish work reports? The mileage made by an engine should, to a great extent, govern the shop-pings, but in many cases where the engines have not made their allotted mileage and are unfit for service, continually having failures on the road, then the general foreman and road foreman of equipment should take these cases up with the master mechanic, stating the facts. The work reports should be furnished by the engineer who runs the engine, if regularly assigned to this engine, by the engine inspector, and roundhouse and road foreman of equipment. If engine is in pool service the report from the engineer would be done away with. Also when engine arrived at shops and was stripped, a competent inspector should go over every part thoroughly, noting wear of parts, adding his report to that of the others for the information of the general shop foreman."

Mr. Bronson's statement means a great deal. He speaks of locomotives in service when in an "unfit condition," and remain in service notwithstanding the continual "failure on the road"—and the reason they are in service is because they have not made the "allotted mileage." He asks the question: "Who should determine when to stop an engine?" No such question need be asked, as far as the boiler is concerned, if this bill becomes a law.

The "pool service" is brought out, and Mr. Bronson shows that an engineer, running one engine one trip and another engine the next trip, etc., can not be held responsible for the condition of the engine and should not be expected to furnish a report. He also says, "When engine arrived at shops and was stripped, a competent inspector should go over every part thoroughly," and now I call your attention to the statement of Mr. Arthur E. Holder, of the legislative committee, American Federation of Labor. Mr. Holder says:

"The boiler of a locomotive is, to use a metaphor, the heart of a railroad. It is the most vital of all the mechanical instruments employed, and it is the most abused."

As will be noted the bill provides for a "competent inspector" to "go over every part thoroughly," as Mr. Bronson suggests. Further, it provides that the railroads are to make monthly inspection, reporting to the government inspector, and the

latter may call on the railroad employees for statements in regard to the condition of the boiler, and in all Mr. Bronson's suggestions and the bill are in strict harmony with each other.

At the fifth annual convention of the International Railway Master Boiler Makers' Association, May, 1906, Mr. C. F. Shoemaker, of St. Thomas, Ontario, Canada, made the following statement:

"When boilers are brought into the roundhouse they should not be blown off in too big a hurry. They should have as much time as possible to cool down, for this is the place that causes stay bolts to break. All boilers should be washed with hot water. Stay bolts should be tested every thirty days, at least, by hammer test. This will cause scale to fall off of stay bolts, more or less, and not allow them to corrode, as I have seen stay bolts with one-half inch of scale on them. When testing stay bolts, if you find one broken bolt, take it out; don't think, 'Well, we will let it go; that don't amount to anything.' These stay bolts are put in for a purpose. If one bolt is broken it means that much more strain on the stay bolts around it, and the first thing you know there will be six or eight stay bolts broken; and we all know it is cheaper to take one stay bolt out than it would be to take out six or eight."

When the foremen boiler makers at their own convention take up such subjects it is self-evident the proper inspection and repairing of boilers is not done. It stands that stay bolts are put in for a "purpose," and if not removed when broken the trouble spreads until there are "six or eight stay bolts broken," and a little later a boiler explosion, which, of course, according to the railroads, was due to "low water." Can you blame, gentlemen, the men who are in the cab for advocating this bill?

Mr. Austin, of the Santa Fe Railway, in opposition to the bill, stated to the Senate committee as follows:

"Mr. Jeffery states that a partly broken or fractured stay bolt can only be discovered by looking inside the boiler, the evident intention being to create the inference that it is necessary for anyone who wishes to discover whether there are any partly broken stay bolts in the boiler to get inside of it. This is not the fact, for several reasons, the principal of which is supplied by Mr. Jeffery himself later, on page 69, last paragraph. These are his words:

"That practically all stay bolts have a small hole in the end of them, 1½ inches deep; that some have a hole clear through them. This is called a telltale hole, and if the bolt breaks the water oozes out of it. This telltale, or, as they are otherwise known, "detector holes," are in the center of these stay bolts on the outside."

It is too bad that Mr. Austin can not rightly read and properly interpret my remarks, but maybe the following, which is an editorial appearing in the Boiler Maker, October, 1907, will be of interest:

"The requirements of the New York laws for the inspection of locomotive boilers, regarding stay-bolt testing, may not differ very much from the usual requirements of most railroad companies, but at the same time they admit of no carelessness. More boiler explosions can be traced to broken stay bolts than almost any other cause. The only way to successfully prevent these failures is by careful and thorough inspection. It is better to have a few good bolts removed by mistake than to leave a number of broken ones in service. The failure of one bolt places an excessive strain on the neighboring stays, with the result that the trouble soon spreads. The best method of testing the bolts may be a subject for discussion, but an experienced inspector will usually have little difficulty in detecting a failure either when the boiler is under hydraulic pressure or when the fire sheet is free to vibrate. The bolts should always be tapped on the fire side, and if there is no pressure on the boiler the water should all be drained off, as otherwise a breakage might pass unnoticed. Telltale holes may give warning of a broken bolt when in service, but it is too easy for these to become plugged to depend upon them absolutely."

The majority of railroads find it easier to plug the telltale hole than to remove the bolt, and adopt the former course in the majority of cases. Most locomotive boilers have about 60 per cent of the stay bolts covered, thus prohibiting the noticing of the warning given by the telltale hole. When the escaping steam from a number of fractured and broken bolts makes it almost impossible for the engineer and fireman to remain in the cab, then the jacket might be removed, and the telltale holes plugged, and the locomotive continues in service with its boiler in an "unfit condition."

Mr. Malley, foreman boiler maker, St. Louis and San Francisco Railroad, Springfield, Mo., at the Master Steam Boiler Makers' Association Convention in 1902, said:

"We have a man who goes in the fire box to inspect the stay bolts. He does not pretend to find the fractured ones. He takes out the broken ones, and examines all around. He keeps that up until he puts in all that are necessary."

The stay-bolt inspector need not attempt "to find the fractured ones" for he knows full well that it is useless. As stated, "fractured bolts" can only be discovered by an internal inspection. Mr. Malley in the course of his remarks stated:



"I will cite you an instance of about 18 new engines which we received about a year and four months ago. One of them ran eight months and finally we discovered one broken. Sent the inspector back and he just found that one bolt broken. I told him to inspect those boilers every trip. The next trip they took out six. We watched the other ones and finally they began to break. When they came into the shop we found as high as 400 and 450 cracked and fractured bolts. I believe if every foreman here would watch the broken stay bolts and take out every fractured bolt, no matter what the cost, he will have a good reputation; but if you let them go it will cost you your reputation."

The fact that Mr. Malley ordered the inspector to inspect the stay bolts after each trip indicates that he doubted very much if the boiler was safe. It is certain that he wanted to prevent an explosion. Then, he states, notwithstanding the close watch maintained, that when the boilers went in the shop for overhauling, he found (by an internal inspection—not by the hammer test) as high as 450 partly broken or fractured stay bolts.

At the Master Steam Boiler Makers' Association Convention, June, 1905, Mr. Gray, foreman boiler maker, Chicago and Alton Railroad, Bloomington, Ill., made the following remark:

"We had some stays about 22 inches long, and the inspector examined them and he said they did not sound right to him; said they sounded about like a man holding a block of wood on top; he got another man to try them and they did not either one think they were broken. I had the dome cap taken off and we found they were broken. That gave us information how a radial stay sounded when it was broken, and we found quite a number from time to time. Whenever we could remove the dome cap we would examine them all up next to the wagon top, and we would find some in the third row and some in the fourth row."

The radial bolts were found broken only from the internal inspection, and Mr. Gray says: "Whenever we could remove the dome cap," etc., they made examination—that is, an internal examination, which resulted, as will be noted, in finding a number of broken bolts. The words "whenever we could remove," shows that this was not a regular practice, and, of course, shows that fractured bolts were not and could not be found by the hammer test. If they could, Mr. Malley never would have found as high as 450 fractured bolts in the boiler when it came into the shop for general repairs.

Mr. Austin, who appears to have been selected by the railroads to upset my testimony before the Senate committee, says:

"When Mr. Jeffery says that 50 per cent of these defects can be traced to poor inspection, he is putting up a statement that, so far as my experience goes, is not justified by the actual conditions. I do not believe that it was the condition of the railroads that he speaks of, his testimony to the contrary notwithstanding. He makes a statement in which he says that sometimes we make proper inspection, but it was the exception and not the rule, and yet fails to show a single instance where a boiler that was not properly inspected did blow up."

I think the best way to reply to Mr. Austin is to state what others, at one time or the other, have said on this subject. Maybe he will take a second thought from now on, and not tell so much about what he does know, or attempt to express an opinion in regard to a condition that I knew prevailed, and because I was there.

At the fifth annual convention of the International Railway Master Boiler Makers' Association, held May, 1906, Mr. George Wagstaff, then supervisor of boilers, New York Central lines, made the following statement:

"If we men who are absolutely responsible for the test of locomotive boilers would insist that the boilers be tested, we would be making a step in the right direction. Just as sure as you test one boiler every six months and another every year, you are going further into the hole. If you are going to do the thing at all, do it systematically."

Mr. Wagstaff recommends just what this bill will bring about—and that is, "systematically." The indifferent method of inspection was such that Mr. Wagstaff felt called upon to call their attention to the direction in which they were traveling, or in other words they are going "from bad to worse;" hence the need of the federal boiler-inspection bill.

At the Master Steam Boiler Makers' Association convention, October, 1902, Mr. Cushing, foreman boiler maker, Cleveland, Cincinnati, Chicago and St. Louis Railroad, Bellefontaine, Ohio, made the following remark:

"In regard to the inspection of boilers, I do not know how a man can inspect by going into the fire box only. Everybody knows these boilers go into the shop at least eight or ten months the first year and after. I think it is the foreman's place to have the boiler thoroughly cleaned out; get inside himself and chip a "V" in the lap to look for corrosion under the lap. Look after the braces and see if they are all right;

look after the stay bolts; and then take out three rivets in the most important part of the boiler, according to his opinion. If he finds no crystallization he does not need to reduce the pressure."

It is evident from Mr. Cushing's remarks that many foremen boiler makers do but little inspecting themselves. This is the case with a large shop, as the foreman has sufficient correspondence to almost tie him to the office, and the best he can do is to pass through the shop, giving orders to his assistants as to what to do. The government inspector can make the inspection that Mr. Cushing says should be made on the shell, the braces, the stay bolts, etc. The time required to do this will not exceed five hours per boiler.

At the convention referred to, following Mr. Cushing's remarks, Mr. Wolfenden, foreman boiler maker, Chicago, Milwaukee and St. Paul Railroad, Milwaukee, Wis., said:

"How would you proceed in the first place? Would you go inside and not take the cover off? You have no sidewalk; you just inspect it from the inside; you must go on the outside. Of course, we are getting on dangerous ground with our employers, but I say this: If we are going to have an organization, let us stand our ground. Have the boiler uncovered. Sound the boiler, examine it for pitting and leaking. Test the boiler. Insist on the flues being taken out, and then examine it. Find the limit of pressure. Take the flues out and examine it on the inside. Look for corrosion along the seams. You can not inspect a boiler from the outside only. The boiler must be uncovered just the same as when it was built."

For your information, gentlemen, I would state that the Master Steam Boiler Makers' Association (the name has since been changed) is not a secret association. The association was founded for the purpose of education of foremen boiler makers by the exchange of ideas, and the betterment of boiler construction. It was pointed out that "betterment" could be secured if the foremen were permitted to make proper inspection and repairs, therefore a movement was started by some members of the association along the lines of the bill you gentlemen are considering, but the movement was of short order, and for the following reasons:

The railroads made it known that if the association was leaning in the direction of having laws passed, they, the foremen, would be on duty when the convention was supposed to assemble, and such things as transportations, expenses, etc., would not be in evidence if the members were not careful what they said and done.

The need of good inspection when constructing new boilers is well brought out by remarks of Mr. W. T. Lowe of the Canadian Pacific Railroad at the Master Steam Boiler Makers' Association convention, held at Chicago, 1905. Mr. Lowe said:

"Not long ago we had an engine come to us from the American side and while we do not mean to say that we build them perfect ourselves, at the same time we are good fault finders, and there is no harm in being a fault finder.

"In the first place by looking into the alignment of holes, we found that they were not in proper alignment; they were not opposite each other; that, of course, is not a good feature in a staybolt. Another thing I always found to the best advantage is to have the inside fire-box holes at right angles, not in such a way that the thread would run out by the inside holes being at an acute angle."

In January's (1906) issue of the Boiler Maker, Mr. M. E. Wells, mechanical engineer, said in a few words the necessity of internal inspection. He says:

"I want to call your attention to the marked corrosion one always finds on the external bends of flanges in flue sheets and fire boxes. I understand perfectly that the enamel of the iron was broken in the flanging, and put the iron in a condition to be easily attacked by the corrosive action of the oxygen and carbon dioxide in the water; but what I want to call your attention particularly is that if the boiler is not cooled uniformly, there is always more or less bending action going on at these points, keeping the protective scale broken off and opening the corrosive spots already started to more continued corrosion. We are positive about this bending or disturbing action of the iron, because we have seen where crowfoot braces have been applied to the flat surface of sheets, and the enamel of the iron has not been distributed. Yet I have seen almost as bad corrosion take place around the feet of these crowfoot braces as I have seen in any bent flange; showing that these braces have, by pulling and pushing, put sufficient bending strain in the iron around the feet to keep the scale off and thus allow corrosion."

Mr. Kendrick at the hearing, March 3, Senate committee, stated that the hydrostatic test, as given in the bill, was excessive, and, to show that it is not, I submit the following:

The factor of safety as applied to a steam boiler is universally considered to mean the proportionate pressure, calculated from the tensile strength of the plate and the efficiency of the riveted joint. The "elastic limit" of flange steel is about 50 per cent of the ultimate strength of the plate. Elastic limit means the point where the applied

strain begins to produce a permanent longation. Up to that point the metal will yield slightly, but when the load is removed the metal will return to its original length, just like india rubber. It is never safe to place a load on any structure beyond this point. A boiler constructed for a working pressure of 100 pounds steam pressure per square inch, factor of safety 5, would burst at approximately 500 pounds pressure per square inch, but the danger point would be reached at 250 pounds (or the elastic limit) if the square of the section of the plate in the longitudinal seam is equal to the shearing strength of the rivets. This is assuming, of course, that the efficiency of the riveted joint is determined by the plate, maximum net section, and the efficiency of the rivets exceeds the latter to some extent. With a factor of 4 (which is often used) the boiler will show signs of distress at 200 pounds pressure, for as soon as the elastic limit of the plate is reached the plate begins to reduce in area, consequently a loss of strength ensues which can never be regained. The factor of safety of 5 is, in my opinion ample in all cases for a boiler shell properly constructed.

We must not assume that a boiler constructed (factor of safety 5) for 100 pounds steam pressure will be able to sustain a hydrostatic pressure of 250 pounds per square inch without serious and permanent injury to the plates, and the foregoing, as will be noted, is at the ratio of  $2\frac{1}{2}$  to 1. However, the ratio as named in the bill is only  $1\frac{1}{2}$  to 1. Therefore, it will be seen that there is a big margin left, and those that have expressed fears have no grounds for same. When the railroads understand this subject, which I do not think many of them know anything about, there will be no complaint along this line. The hydrostatic test as named in the bill, I would state for your information, gentlemen, is the generally used ratio throughout the entire world—Canada, England, etc.

I would hardly consider the subject complete unless I brought to your attention the number of boiler explosions in England as compared with the United States. The Mechanical Engineer, of London, in its issue of December, 1905, devoted considerable editorial space to the frequency with which boiler explosions occur in the United States, saying, among other things:

"We have on previous occasions called attention to the greater frequency of boiler explosions in the United States as compared to this country. An exact comparison is not possible, as the data collected in the States is of an unofficial and very incomplete character, as compared with that available here, where, under the provisions of the boiler explosions acts, notification of every casualty, however trifling, whether on sea or land, resulting from the failure of steam apparatus, has to be made to the board of trade and is included in the official returns, whereas in the States the only figures available are those collected by the Hartford Boiler and Inspection Company, which are admittedly incomplete and only include disasters of such importance as those which furnish material for newspaper comment, and hence omit many disasters that occur in isolated districts far from the reach of the reporters. The figures, however, taken on this basis suggest a lamentable disregard of care and precaution in the working of the steam boiler, with its consequent injury to life and limb for which the United States has attained in many other directions an unenviable notoriety.

"The current issue of the Locomotive, a little contemporary published by the company in question, gives the following summary of the explosions that have occurred during the past year, and also the totals for several previous years, from which it will be seen that our comments are in no way exaggerated:

	1900.	1901.	1902.	1903.	1904.
Number of explosions.....	373	423	391	383	301
Killed.....	265	312	304	293	220
Injured.....	520	646	529	522	394

"A comparison of the above figures with those furnished in the last annual report by the board of trade on the working of the boiler explosions acts is instructive. This report gives the statistics of persons killed and injured from the working of steam apparatus throughout the whole of the United Kingdom, and on board all British steamships since the year 1882, when the acts first come into force, and shows that during the years named the number of lives lost and the persons injured from accidents of every description in this country averaged 28.6 and 60.6, respectively.

"Having regard to the imperfect nature of the figures relating to the States, it is not an exaggeration to say that there are more people killed and injured by boiler explosions in a month in America than in this country in the course of a year.

"A correct comparison of the toll of fatality would, of course, take into account the number of boilers employed in the two countries. With the respect to this, no exact

figures are available, but we credit the United States with 50 per cent more boilers than this country—a liberal estimate—it will be seen that the sacrifice of life in the United States is far in excess of which it ought to be, and incidentally proves the efficiency of the work of inspection so admirably carried out by the inspection in this country, and the immunity from danger which steam users as a consequence enjoy.”

I trust, gentlemen, you will see the need and the wisdom of the bill in question becoming a law.

Respectfully submitted.

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[H. R. 25924. Sixty-first Congress, second session.]

A BILL To promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia or in any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term “railroad” as used in this act shall include all the roads in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term “employees” as used in this act shall be held to mean persons actually engaged in or connected with the movement of any train.

SEC. 2. That from and after the first day of January, nineteen hundred and eleven, it shall be unlawful for any common carrier, its officers or agents, subject to this act, to use any locomotive engine propelled by steam power in moving interstate or foreign traffic unless the boiler of said locomotive and appurtenances thereof comply with the following requirements: Such boiler must be well made, of good and suitable material; the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat must be of proper dimensions and free from obstructions; the spaces between and around the flues shall be sufficient for proper circulation. Such boiler must be equipped with a steam-pressure gauge, safety valve, gauge cocks, and water glass, means of removing mud and sediment from boiler, and all such other machinery and appurtenances as are requisite for the proper and safe operation of such boiler in the service to which the same is put, all of which shall be of such shape and arrangement that the boiler can be properly inspected, and of such condition that the same may be safely employed in the active service of such carrier in moving such traffic without unnecessary peril to life or limb. Such boiler must be able to withstand a hydrostatic test in the ratio of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the working pressure.

SEC. 3. That there shall be appointed by the President, by and with the advice and consent of the Senate, an inspector-general and two assistant inspectors-general of locomotive boilers, who shall have general superintendence of the inspectors herein-after provided for, direct them in the duties hereby imposed upon them, and see that the requirements of this act and the rules and regulations made hereunder are observed by common carriers subject hereto. The said inspector-general and his two assistants shall be selected with reference to their practical knowledge of the construction and repairing of boilers and to their fitness and ability to systematize and carry into effect the provisions hereof relating to the inspection and maintenance of locomotive boilers. The inspector-general shall receive a salary of five thousand dollars per year, and the assistant inspectors-general shall each receive a salary of three thousand dollars per year; and each of the three shall be paid his traveling expenses incurred in the performance of his duties. The office of the inspector-general shall be in Washington, District of Columbia, and the Interstate Commerce Commission shall provide such stenographic and clerical help as the business of the offices of the inspector-general and assistant inspectors-general may require.

SEC. 4. That immediately after his appointment and qualification the inspector-general shall divide the territory comprising the several States, the Territories of New Mexico and Arizona, and the District of Columbia into one hundred locomotive boiler-inspection districts, so arranged that the service of the inspector appointed for each district shall be most effective, and so that the work required of each inspector shall

be substantially the same. Thereupon there shall be appointed by the Interstate Commerce Commission one hundred inspectors of locomotive boilers. Said inspectors shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Civil Service Commission governing the classified service. The inspector-general shall assign one inspector so appointed to each of the districts hereinbefore named. Each inspector shall receive a salary of one thousand eight hundred dollars per year and his traveling expenses while engaged in the performance of his duty. He shall receive in addition thereto an annual allowance for office rent, stationery, and clerical assistance, to be fixed by the Interstate Commerce Commission, but not to exceed in the case of any district inspector six hundred dollars per year. To become eligible for the examination hereinbefore provided for, the applicant must show that he has had at least five years' experience as a journeyman in the construction and repairing of steam boilers; and in order to obtain the most competent inspectors possible it shall be the duty of the inspector-general to prepare a list of questions to be propounded to applicants with respect to the construction, repair, and operation of locomotive boilers, which list being approved by the Interstate Commerce Commission shall be used by the Civil Service Commission as a part of its examination.

SEC. 5. That the inspector-general shall prepare from time to time rules and regulations not inconsistent herewith for the inspection, testing, and repair of locomotive boilers, to be observed by the carriers subject to this act, which rules and regulations, being approved by the Interstate Commerce Commission, and a copy thereof being served upon the president, general manager, or general superintendent of each of such carriers, shall be obligatory, and a violation thereof punished as hereinafter provided. The inspector-general shall also make all needful rules and regulations not inconsistent herewith for the conduct of his office, and for the government of the district inspectors: *Provided, however,* That all such rules and regulations shall be approved by the Interstate Commerce Commission before they take effect.

SEC. 6. That it shall be the duty of each inspector to become familiar, so far as practicable, with the condition of each locomotive boiler ordinarily housed or repaired in his district, and if any locomotive is ordinarily housed or repaired in two or more districts then the inspector-general or an assistant shall make such division between inspectors as will avoid the necessity for duplication of work. Each inspector shall make such personal inspection of the locomotive boilers under his care from time to time as may be necessary to fully carry out the provisions of this act and as may be consistent with his other duties, but he shall not be required to make such inspections at stated times or at regular intervals. His first duty shall be to see that the carriers make inspections in accordance with the rules and regulations established by the inspector-general and approved by the Interstate Commerce Commission, and that carriers promptly repair the defects which such inspections disclose. To this end each carrier subject to this act shall file with the inspector in charge, under the oath of the proper officer or employee, a duplicate of the report of each inspection required by such rules and regulations, and shall also file with such inspector, under oath of the proper officer or employee, a report showing the repair of the defects disclosed by the inspection. The rules and regulations hereinbefore provided for shall prescribe the time at which such reports shall be made and defects repaired. Whenever any district inspector shall, in the performance of his duty, find any locomotive boiler or apparatus pertaining thereto not conforming to the requirements, of the law or the rules and regulations established and approved as hereinbefore stated he shall require the same to be placed in proper condition by the carrier in whose service the said locomotive boiler is employed, and shall so notify the carrier in writing that the locomotive is not in serviceable condition, and thereafter such boiler shall not be used until in serviceable condition, and until the inspector in charge has so certified.

SEC. 7. That the inspector-general shall make an annual report to the Interstate Commerce Commission of the work done during the year, and shall make such recommendations for the betterment of the service as he may desire.

SEC. 8. That in the case of accident resulting from failure from any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident, by the carrier owning or operating said locomotive, to the district inspector of the district in which said accident occurs. Whereupon the fact concerning such accident shall be investigated by said inspector or by the inspector-general or one of his assistants. And where the locomotive is disabled to the extent that it can not be run by its own steam, the part or parts affected by the said accident shall be preserved by said carrier intact, so far as possible without hindrance or interference to traffic, until after said inspection. The district inspector or inspector-general or an assistant shall

examine or cause to be examined thoroughly the boiler or part affected, making a full and detailed report of the said accident.

SEC. 9. That any common carrier violating this act, or any rule or regulation made under its provisions, or any lawful order of any inspector shall be liable to a penalty of three hundred dollars for each and every such violation, to be recovered in suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such attorneys, subject to the direction of the Attorney-General, to bring such suits upon duly verified information being lodged with them, respectively, of such violations having occurred; and it shall be the duty of the inspector-general of locomotive boilers to give information to the proper United States attorney of all violations of this act coming to his knowledge.

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COMMITTEE ON INTERSTATE AND  
FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Tuesday, May 17, 1910.*

The committee met at 10.15 o'clock a. m., Hon. James R. Mann (chairman) presiding.

**STATEMENT OF MR. A. A. ROE, REPRESENTING THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS AND THE BROTHERHOOD OF RAILROAD TRAINMEN.**

MR. ROE. Mr. Chairman, those in support of the boiler-inspection bill are very anxious to have General Uhler, Supervising Inspector-general of the Steamboat-Inspection Service, appear before this committee, but we learn that he is unavoidably out of the city and will not be here for the next two weeks, and therefore, Mr. Chairman, we would like very much to have a statement which was made by General Uhler before the Senate Committee on Interstate Commerce on this same subject incorporated in the hearings before this committee.

THE CHAIRMAN. I suppose there is no objection to that, but I suppose we will probably want to hear General Uhler before the committee before we are through, or at some subsequent time.

MR. ROE. That is very satisfactory to us if it can be arranged, but if it can not be arranged so that General Uhler can appear before this committee, I would like to have inserted in the record here his statement before the Senate committee.

There has been so much said on this subject that I feel that it is unwise to take up any further time in the discussion of the bill, and I feel that the general principles contained in this legislation have been thoroughly gone over in the enactment of legislation in the interest of human life. Every instrumentality of transportation from the locomotive to the motorcycle is to-day under government supervision, either municipal government, state government, or National Government, and therefore I say that the principles contained in the legislation are so well grounded and have so generally received the stamp of approval from both state and national governments that I believe it is unnecessary to further discuss them.

THE CHAIRMAN. Mr. Roe, Mr. Townsend yesterday introduced the bill H. R. 25294, which I understand is the bill that we ordered printed in the hearings of yesterday?

MR. ROE. Yes, sir.

THE CHAIRMAN. That is your understanding?

Mr. ROE. Yes. The bill referred to, Mr. Chairman, is the result of protracted conference with the supporters of the principle of boiler inspection. This being new legislation, and there being a wide diversity of opinion among those who are earnestly endeavoring to enact legislation to ameliorate the conditions of which we are now complaining, taking that into consideration and in the interest of economy we have felt that it was best to modify the original bill introduced by Mr. Townsend with a view to making it possible to cut down the expense incidental to carrying the original bill into operation, by making it the duty of the common carriers making inspections along the lines that are prescribed by the boiler-inspection board, as created in this bill, to also report the repairs made of the defects brought out by the inspection, and to create local inspectors enough to ascertain whether or not the railroad company is making the inspections and making the repairs as prescribed by the board. That is the purpose of the bill as it now stands, Mr. Chairman, and we figure that the expense to the Government would not exceed \$350,000 to \$400,000 a year, and we hope by this method to establish the principle, and believe that it will develop within a reasonable length of time, say, one or two years, whether or not we have been wise in reducing the number of inspectors; and if so, well and good. If not, we will then have ample opportunity to increase the number to meet the interests of the service.

It might be well before closing this argument entirely to call attention in a general way to what has been said—to make a summing up. It occurs to me that all parties here, whether supporting or opposing the measure, are employees of the common carrier. We are not radically different. Those who are supporting the measures are representing the employee who is directly affected, who handles the engine, rides upon it, and is constantly about the engine, and exposed to the dangers incidental to the operation of machinery of that kind.

Mr. BARTLETT. May I ask you a question right there?

Mr. ROE. Yes, sir.

Mr. BARTLETT. You speak of the locomotive engineers and firemen and the Brotherhood of Trainmen, all of them as now advocating this measure. Of course there is an association of locomotive engineers and then there are the firemen, and then there are the railroad trainmen. Whom do you include when you say "those supporting the bill?"

Mr. ROE. The employees represented here include the engineer, the fireman, the conductor, the trainman, and the yardman.

Mr. BARTLETT. You used the word "trainman." I understood that the Association of Railroad Trainmen included all the employees; that the engineers and firemen and conductors had their own associations, but that the association of trainmen was an organization that embraced all. Is that correct?

Mr. ROE. That is an organization that embraces the conductor, the brakeman, and the yard man.

Mr. BARTLETT. It does not embrace the engineer?

Mr. ROE. No, sir. It embraces everything behind the engine in the way of men.

Mr. BARTLETT. The reason I asked is that I have letters from trainmen and engineers and conductors, and also from men who work in the shops.

Mr. ROE. On the other hand, Mr. Chairman, these men who are here opposing the bill are employees of the carrier, and I am willing to concede that they are honestly endeavoring to do what in their judgment is right. But I think that is important. These men are perhaps here by direction of a higher authority—general managers or committees—and the standing of those men and those who are here in support of the measure, I think, should be taken into consideration.

You have heard those who have been in the past charged with making these repairs state that the repairs were not made in compliance with the inspection. You have also heard those who were opposing the measure state that certain rules and regulations have been laid down for this inspection. They have submitted their official documents showing what this inspection is. You have also heard that on the reverse side of these same reports it is shown that the repairs were not made. There seems to be abundance of evidence to show that a great number of locomotive boilers are being constantly operated in an unsafe condition. That is, briefly, what has been stated before the committee in that regard, and it can, of course, be considered for what it is worth. There is a difference in opinion, the statements conflict, and it seems that it is up to this committee, it is up to Congress, to ascertain or judge whether or not these inspections and repairs are being made, and whether or not these locomotives are being operated in an unsafe condition. It seems to me that is the question.

Mr. BARTLETT. Well, is that all the question? While whether they are being operated in a safe or an unsafe condition is one question, another consideration is that although they may up to the present time have been operated in a safe condition, if Congress has the power and the authority to do it, should it not provide for safe operation regardless of whether there has been any abuse by the railroads, or any neglect on the part of the railroads? The steamboat-inspection law was not passed so much, I apprehend, because of fatal explosions of boilers as to provide for the safety of those who travel. It has occurred to me that it would not be altogether the thing for you to put your case absolutely upon the proposition that the evidence shows that they have not done all that they should have done; but our province in the matter of legislation is to provide safety appliances for the future, whether they have done in the past what they ought to have done or not.

Mr. ROE. That is very true; but if, in the judgment of these men who operate these locomotives, who are about them at all times, they were in a safe condition, we would not be asking for this legislation.

Mr. TOWNSEND. Mr. Roe, as I understand it you would be satisfied if you could be assured that the locomotive engines were going to be thoroughly inspected according to the best standard known, and if when defects were discovered they were properly repaired? Now, if such a standard could be established and sufficient penalties imposed to insure the observance of the rules laid down, you would not be so



particular in the first instance as to how many of these inspectors there should be; would you?

Mr. ROE. Yes.

Mr. TOWNSEND. Could not that, to a certain extent, be safely left to this board, and to the Interstate Commerce Commission, as they shall find it necessary from time to time to appoint men to investigate as to whether the rules have been observed or not?

Mr. ROE. I can say this, Mr. Townsend, that we are only interested in having the locomotive properly inspected and in having those repairs properly and promptly made which the inspections develop are necessary. That is our object. As to the number of local inspectors, while it is quite possible that the Interstate Commerce Commission or the board may be as accurate in fixing the amount or the number as we would be, we feel in placing the number at 100 that we are very liberal, because we believe it would require at least that number of men in order to give a proper supervision of the vast number of locomotives that must be in each local territory. With some 66,000 locomotives it will undoubtedly require that number of men to be in close touch at all times, so as to know the exact condition of these boilers.

Mr. TOWNSEND. The whole value of this matter will depend upon the ability of the inspector, will it not?

Mr. ROE. To ascertain whether or not the boiler is in fit condition? Yes.

Mr. TOWNSEND. As I understand it, many of the carriers are perfectly willing to submit to any reasonable rule as to inspection, and desire simply that the men who inspect or who investigate shall be competent and shall know what they are doing?

Mr. ROE. Yes, sir; that is, I believe, the sentiment that has been expressed here, and you understand that under this bill (H. R. 25924) the local inspector would only inspect a locomotive when in his judgment it was necessary to ascertain whether or not the report submitted by the common carrier for that particular locomotive was correct, whether or not the inspection had been made, and whether or not the repairs had been properly made; and in doing that I think that we would accomplish, or at least we hope that we would have accomplished, something in the right direction.

Mr. BARTLETT. Is there any fixed rule in the statutes about how frequently the steamboat boiler inspectors shall inspect? I have not looked at the statutes.

Mr. ROE. In the bill?

Mr. BARTLETT. No; I mean in the law?

Mr. ROE. In this bill?

Mr. BARTLETT. No, no. There is a requirement as to the inspection of steamboat boilers.

Mr. ROE. I am not familiar with that law.

Mr. BARTLETT. There is another question I wanted to ask you about the details. Do you think it is necessary to have this inspector-general appointed by the President, by and with the consent of the Senate? Do you not think the Interstate Commerce Commission or the Secretary of Commerce and Labor, or some other person, would be better able to judge of the qualifications than the President, who probably would have to refer the matter to some one else anyway?

Mr. ROE. As far as I am individually concerned, I would say in regard to that, I am not particular how it is carried out. It is a matter of detail that I am sure can be wisely left to the judgment of this committee and to Congress as to how these men should be appointed. I am not at all particular about that.

Mr. BARTLETT. You propose to permit the inspector-general, who has charge of all this, to be appointed by the President, by and with the advice and consent of the Senate. To be sure, he is an inferior officer, but it looks to me as if there ought to be some head of a department or bureau to appoint this inspector-general. You see, you permit the Interstate Commerce Commission to appoint the others, but require some further evidence of efficiency. In other words, it ought to be just like it might be a political appointment. That is what I mean.

Mr. ROE. Yes. Well, I am sure, as I said before, that I am willing to leave that to the wisdom of Congress; but perhaps this bill was drawn to follow the precedents that had been established, and you also must take into consideration that the inspector-general in a department of that kind must be selected not only because of his knowledge of the technical work of construction and repair, and so forth, of boilers, but also with a view, I take it, to his ability to systematize and put in operation a great proposition of that kind.

Mr. BARTLETT. I understand; but you provide that he shall be appointed by the President, and the President has not time to attend to that personally, and probably will have to refer it to somebody.

Mr. ROE. Yes. Now, Mr. Chairman, we have prepared and submitted a statement showing the number of accidents as reported by the carriers to the Interstate Commerce Commission, and while they are appalling, yet they fail to include all of the accidents and casualties that are a direct result of a defective locomotive boiler. As a man who has had some fifteen years' experience as conductor and brakeman, I know that numerous accidents are occurring constantly because of defective boilers, which are reported under a different head entirely.

Mr. BARTLETT. May I ask you a question right there? Suppose an engineer or fireman—the engineer has charge of the engine—says that the engine is not properly repaired, and he is directed to go on with it and he declines to do it, what happens then if he protests? Of course, I know what the legal effect of that would be, but I want to know what happens?

Mr. ROE. The engineer must obey instructions.

Mr. BARTLETT. I know that.

Mr. ROE. That is one of the first requisites of a railroad man, to obey instructions, and he is often told that if he thinks he is being injured he must go ahead and obey instructions and afterwards take the matter up. In the case of a defective boiler, he will sometimes go ahead and obey instructions and not live to have an opportunity to take the matter up in this world.

Mr. BARTLETT. For instance, when an engineer brings an engine in and calls attention to its defects—something has happened on the road—and they inspect it and repair it, and turn it over to him to go out again, and he says: "This has not been properly inspected and it is not in proper condition to do the work you call on me to do," do they give him another engine, or require him to go out with that engine?

Mr. ROE. No; he would be required to go out; and he would perhaps be told that if he did not want to take the engine out there would be another man who would do it; and so long as those were the conditions, he would feel compelled to take it out or resign his position. There may be extreme cases where that is not the rule, but I state the rule from my own observation. It is the rule that the engineer makes out the report in the book that is carried in the cab, but by going over those books as I have done for my own information, in many instances when the traffic is heavy and the business is rushing and a lack of power is apparent, a very small per cent of this work which is outlined in the engineer's book is done.

Mr. WANGER. Does it or does it not happen, where the engineman believes the boiler is in bad condition and his superior officer disagrees with him, if the engineman earnestly reiterates his opinion of the unfitness of the boiler, that it leads to a change of opinion on the part of the superior?

Mr. ROE. It might, sir, in some cases. As a rule, as a general thing, from my own personal observation, you understand, the engineer will not do that, unless he is positive in his own mind that the boiler is positively dangerous. It is not something that can be ascertained to an exactness. He does not know, and I take it no human mind knows, that the boiler will operate up to a certain hour or to a certain day without exploding or without causing accident; but he may in his own judgment think that the boiler is not safe. However, because of knowing the fact that it is not possible to ascertain just the breaking point and the time when it will break, he may say, like the official, "Well, she may run another trip," and he will go out another trip.

Mr. BARTLETT. Take the risk?

Mr. ROE. Yes, sir.

Mr. WANGER. Will you instance some cases of accidents resulting from defective boilers, in your judgment, which are not recorded or reported as such?

Mr. ROE. Yes; I was just about to do that.

Mr. WANGER. Very well.

Mr. ROE. I can call to mind quite a number of specific accidents, but in a general way is happens like this. You have been told about the telltale hole in the stay bolt, and the fractured bolt and the escaping steam. That is something that is very frequently the case with a locomotive engine, especially with a freight engine, and it is very seldom in my experience that during the cold winter months we have an engine that is not leaking steam in that way at some place or at some time during the trip, and here is where the accident occurs, as I claim due directly to the defective boiler: The brakeman or the yardmen working with this engine, depending upon the engineer to catch the signal just at the right time, just at the time that the signal should be given, by change of the wind blowing the steam so as to obscure the engineer's view, he does not receive the signal, and the consequence is that a drawhead is bursted in or a man is pinched or a car is sideswiped, and all of those are reported as collisions and corning a car, when as a matter of fact they are due directly to the defective condition of the boiler, because the escaping steam obscures the view of the engineer and he fails to receive the signal. My experience leads me to believe that such an accident as the

result of a defective boiler very frequently occurs, and as I say, the reports show that it is due to the engineer not receiving the signal or the yardman or the brakeman failing to give the signal, or any one of a thousand other reasons are given as causing this collision, this destruction of property, or derailment of a car, and all those things that do not come under the head of locomotive boiler explosions, or defective locomotive boilers, under the present method of making reports. That, I think, is important.

The CHAIRMAN. Is there anything else, Mr. Roe?

Mr. ROE. No, I believe not. We have a gentleman here, Mr. Holder, who wanted to address the committee on this subject.

The CHAIRMAN. Very well. Is there anything else?

Mr. FAULKNER. Do you want us to go on now, Mr. Chairman? Of course, we have not had an opportunity of examining this last bill. We understand it was introduced yesterday, and we got a copy of it just now, and I would like to know what time the committee would want to give us this morning?

The CHAIRMAN. I do not see how it is practicable to give you any time this morning. The House meets in a few minutes, and there is another matter before us here. I think we will have to let the committee determine that later. They may want to hear General Uhler. They probably will at some later date.

Mr. FAULKNER. Mr. Chairman, we feel very anxious that you should allow us to meet some of the propositions that were made here by these parties, and also the general proposition, which is a very important one to the people. The American Railway Mechanical Association, which is a part of the American Railway Association, has been working on rules and regulations governing the inspection of boilers. I am sorry to say that I am afraid they will not be able to finish those regulations by the time that the association will meet to-morrow. They have been working all spring, I think, with the purpose of getting them before the association that meets to-morrow, and we are very anxious that nothing shall be done in this matter until we get a basis upon which legislation can rest with absolute safety and security to all parties.

We believe that the introduction of these bills has been most advantageous to all parties in interest. It has directed more actively the minds of the authorities of the railroads to this question, and they have gone to work through these technical men to formulate such accurate rules as would be the basis of a proper legislative enactment which Congress might find it necessary, when these rules are formulated, to adopt and make a part of the statute. To leave this wide open without any basis upon which to rest it, and leave it open to the general views of inspectors, we think would be detrimental both to the public and to the railroads, because the efficiency of these engines is one of the most essential features, of course, to the railroads themselves. Their whole traffic must depend upon the efficiency of their motive power, and they have been exceedingly careful, therefore, in all of the inspections of the past as well as they are at the present time, and will be in the future. We look upon this matter as a matter of absolute vital interest to the road itself, to have those engines in the most perfect condition, and in looking over the data of explosions of boilers we find that the condition of the engine, so far as inspection by the railroad is concerned, has been proved by

investigation to be simply marvelous. We find that there has not been in all the explosions——

The CHAIRMAN. Well, Senator, excuse me.

Mr. FAULKNER. Excuse me.

The CHAIRMAN. You are not prepared to go ahead this morning now, and we are not prepared to hear you.

Mr. FAULKNER. No, sir; we are not prepared.

The CHAIRMAN. The committee will determine later whether they will have further hearings on the subject.

Mr. FAULKNER. Well, I sincerely hope that the committee will give us an opportunity to be heard. We are willing to come here at any time. Some of our men could not come here, because they were at the convention of this very association, attending to this very matter. So that with the understanding, Mr. Chairman, that you will certainly give us an opportunity to be heard, I will say nothing further.

The CHAIRMAN. The committee will determine that.

Mr. FAULKNER. We of course will have to appeal to the committee. We will obey the committee. Whenever they want us, we will be here.

WASHINGTON, D. C., May 17, 1910.

HON. JAMES R. MANN,

*Chairman Committee Interstate and Foreign Commerce,*

*House of Representatives, Washington, D. C.*

DEAR SIR: In connection with the four reasons assigned by the committee of the International Master Boiler Makers' Association in regard to boiler explosions, the writer omitted to state that out of a membership of about 500 the majority of the members are railway foremen boiler makers.

The committee, except one, which conducted the research are railway foremen boiler makers. The point I wish to make is this: This committee made a public statement as to the causes of boiler explosions and gave four reasons. They did not say that 98.7 per cent of boiler explosions are due to the indifference of the locomotive engineer.

The official of the Santa Fe Railway would lead one to believe that the reports for about five years were carefully gone over from 134 railroads, and the result of the research brought out that the engineers were the parties to blame for boiler explosions.

As the members of the above-named associations are employed by more or less of the 134 railroads, and they do not support the statement of the Santa Fe official, it follows that said official has been deceived, and this illustrates the very point that I and others have made, to wit, the middle, or "petty officials," are ones that doctor the reports; also are the ones that order locomotives to be used when the boilers are in an unfit condition.

The foremen boiler makers do their part, and if their reports without change reached the main officials of the railroads I am satisfied things would be different. These men receive rosy, false, and misleading statements and, of course, in view of these reports come to Washington to defeat a bill that means more to them than they realize. The foremen boiler makers, who do the inspecting or supervise the inspection, do not support the statement made by the Santa Fe official.

Had the Santa Fe official known that many, perhaps all, of the foremen boiler makers of the 134 railroads he included in his statement knew and expressed themselves differently, he would have looked into the matter more thoroughly and, doubtless, would have changed his opinion considerably.

Please have this placed on record, printed hearings.

Yours, truly,

H. S. JEFFERY.

## STATEMENT OF ARTHUR E. HOLDER, LEGISLATIVE COMMITTEE AMERICAN FEDERATION OF LABOR.

Mr. HOLDER. Mr. Chairman and gentlemen of the committee, for the sake of the record, permit me to say that I reside in Washington, D. C., and represent the American Federation of Labor, as part of its legislative committee. I am a machinist by trade, and as such have had thirty years' practical shop experience. Sixteen years of that period have been spent building and repairing locomotives, and for four years I was factory inspector of the State of Iowa.

In the public interest, as well as the direct representative of many thousands of citizens engaged in the manufacture, repair, and upkeep of locomotives, I ask that your honorable committee give favorable consideration to the principles contained in the "boiler inspection" bill, introduced in the Senate by Senator Burkett, and known as "S. 6702," and I urge you to recommend to the Congress the enactment of legislation that will safeguard the lives and limbs of men employed by railroad companies. The risks they have to assume in their occupations are altogether too numerous for them to be unnecessarily exposed to dangers that should and can be avoided. Boiler explosions can be prevented; they are not a necessary evil to the successful operation of a railroad.

The boiler of a locomotive is, to use a metaphor, the heart of a railroad. It is the most vital of all the mechanical instruments employed, and it is the most abused.

The Federal Government should extend its police power in the interest of public policy and the general welfare, and establish a bureau of competent locomotive-boiler inspectors, in order that fire-box sheets, boiler tubes, stay bolts, crown bars, boiler braces, and boiler rivets may be properly tested and a standard fixed. The material that is used for these purposes on locomotive boilers if subjected to the average test made by the Steamboat-Inspection Service would in many cases be rejected.

Quality is being sacrificed to cheapness, and this general system, which has a tendency to inefficiency and deterioration, also applies in the shops and roundhouses of the railroads where quality of work is sacrificed to quantity. The general slogan by master mechanics and roundhouse foremen has become notorious, and on every hand is heard these expressions, "That's good enough," "Oh, let it go," "Hurry up, get her out," and when such orders are given to a workman by one in authority they have to be obeyed, even if the property of the railroad is thereby endangered and the lives of the public and the workers unduly exposed.

Federal boiler inspection would correct this. The moral effect would be worth millions of dollars to the investing public, and its influence would save untold misery and poverty in hundreds of humble homes.

Locomotive boilers are frequently run beyond their capacity, and no class of mechanics know that better than the machinist. Locomotive boilers are neglected when they should be cared for, and instead of encouraging the mechanics who repair them and the laborers who clean them the reverse is usually true. In fact, it has become a byword among machinists that the newer the arrivals from Castle Garden the more acceptable they are for roundhouse men. They are in too many cases the care takers of the locomotive boilers.

Fire-box sheets are subject to intense abuses during manufacture and repair. Rivet and stay bolt holes are punched instead of drilled; this practice unduly crystallizes the material and subjects the sheets to unnatural strains, so much so in fact that I have frequently seen new sheets after being so abused crack their whole length, sometimes vertically, other times horizontally or diagonally. Then these cracks are plugged, and I have personally plugged sheets with as many as 30 continuous plugs at a time, "in order to get her out," as the foreman would order, both of us knowing full well that such malpractice in mechanics was a standing invitation to worse and more serious troubles.

The condition of internal boiler braces is too commonly ignored, and crown bars are allowed to collect unreasonable quantities of scale and other sediment. Federal boiler inspection would remedy these invitations to disaster, and the lives of the locomotive engineers, firemen, brakemen, and others whose duties it is to work in the cab, would be conserved, and the blame finally located for faulty boilers where it commonly and properly belongs, viz, on the heads of aspiring officials in shops and roundhouses.

It is the essence of cruelty to blame an engineer for an explosion and ascribe it to "low water," in order to shirk responsibility. It is equivalent to manslaughter to send a crew out with a boiler that should be cared for, especially when the person in authority knows full well that the boiler is "in bad order," but for ambition's sake wants to get "another trip out of her."

Federal boiler inspection would be an avenue for employees to make honest reports without fear of losing their jobs, and it would work for the safety of the employees

and the public, in fact, the nation. The present insidious system of intimidation of employees by large corporations is one of the most, if not the most, serious danger confronting the people.

Give the employees an opportunity to tell the truth; they will not abuse this right, but it will react with untold benefit to themselves, the investors, and the nation.

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LIST OF STATES HAVING LAWS RELATING TO THE INSPECTION OF STEAM BOILERS.

Colorado.	Michigan.
Connecticut.	Minnesota.
Indiana.	Montana.
Iowa.	New York.
Maine.	Ohio.
Maryland.	Pennsylvania.
Massachusetts.	

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[Senate Document No. 680, Sixtieth Congress, second session.]

STATE LAWS RELATING TO THE INSPECTION OF STEAM BOILERS.

[Prepared by the United States Bureau of Labor.]

COLORADO.

SEC. 4192. The governor of the State of Colorado shall, by and with the advice and consent of the senate, on or before April 1, 1889, appoint an inspector of steam boilers. The person so appointed shall be well qualified, from practical experience in the use and construction of boilers, generators, superheaters and their appurtenances, used for the generating of steam for power, steaming, or heating purposes, and shall be neither directly nor indirectly interested in the manufacturing, ownership, or agency of same. The duty of said inspector shall be to inspect steam boilers throughout the State, as hereinafter specified and directed. The inspector shall hold office for the term of two years from date of appointment, and until his successor shall be appointed and qualified, and before entering on the duties of his office he shall give a good and sufficient bond in the sum of \$5,000 for the faithful performance of his duties, to be approved by the attorney-general and deposited with the secretary of state. Said inspector shall receive an annual salary of \$2,500 and mileage at 10 cents per mile, payable as other state officers: *Provided*, He shall not receive mileage to exceed \$500 in any one year. Said inspector may appoint deputy inspectors in each judicial district in the State, and who shall have the same powers as the inspector, who shall receive as compensation \$4 per day while actually employed, and shall be paid in the same manner as other state officers and mileage at 10 cents per mile. He may also employ a clerk at an annual salary not exceeding \$1,000, to be paid monthly, as other state officers.

SEC. 4193. The inspector shall devote his time and attention to the duties of the office. He shall carefully inspect and test every stationary boiler and steam generating apparatus under pressure used for stationary power, as provided by this act, including all attachments and connections, located within the State of Colorado, once annually, and shall give the owner of any such boiler five days' notice of the time when he will make such inspection: *Provided*, That any owner or user of any steam boiler in this State who may desire to insure such boiler in any reputable insurance company, and who shall desire to have an inspection made for the purpose of said insurance, may give to said state steam boiler inspector ten days' notice, in writing, of the time of such contemplated insurance inspection, and it shall thereupon be the duty of said state steam boiler inspector to cause the annual state inspection, [by] this act provided, to be made at the same time that said examination for insurance is made; he shall examine into and report to the governor the cause of any boiler explosion that may occur within the State; he shall keep in his office a complete and accurate record of the names of owners or users of steam boilers inspected, giving a full description of the same, the amount of pressure allowed, the date when last tested, and shall make an annual report to the governor.

SEC. 4194. It shall be the duty of every owner or user of steam boiler or boilers, in use or to be used in any part of this State within thirty days after the passage of this act, and once a year thereafter, at such convenient times and in such manner and form

as may be determined by rules and regulations to be made therefor by the inspector, to report to said inspector the location of such steam boiler or boilers, and all apparatus and appliances connected therewith, and the strength and security of such boiler shall be tested by hydrostatic pressure, each boiler being tested one-third greater than the ordinary working steam pressure used, and to a pressure demanded by the owner; and the certificate of inspection herein provided shall state the maximum pressure at which such boiler may be worked. If at any time the inspector shall find a boiler which, in his judgment, is unsafe, after inspecting the same he shall condemn its future use. All boilers to be tested by hydrostatic pressure shall be filled with water by the owners or users, and they shall furnish the necessary labor required to work and handle the pumps in applying the test, which pumps shall be furnished by the inspector if necessary. All certificates shall be for one year, unless sooner revoked for cause.

SEC. 4195. The owners or users of steam boilers, or engineers in charge of same, shall not allow a greater pressure in any boiler than is stated in the certificate of inspection granted by the inspector. No person or persons shall use or cause to be used for generating steam any boiler that has been condemned as unsafe by the inspector. Before the owner, owners, or users of any steam boiler or boilers shall have said boilers placed in position, he or they shall notify the inspector, who shall, within ten days from the date of receiving such notification, examine the same and satisfy himself that the construction, material, bracing, and all other parts of such boiler or boilers are such as to assume the safety of the same. Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine in any sum not exceeding \$1,000, or by imprisonment for a period not exceeding two years, or by both such fine and imprisonment.

SEC. 4196. There shall be paid for the inspection of each boiler, according to the provisions of this act, the sum of \$5, to be paid by the owner, user, or agent of the same occupying the building in which it may be situated, and the inspector shall receipt for the same. In case the owner, user, or agent of any such boiler or boilers shall fail to report the location of such boiler or boilers to the inspector, as aforesaid, he shall be liable to pay a penalty of \$50, and in case the owner, users, or agent of any such boiler or boilers shall fail to have the same ready for inspection as aforesaid, he shall be liable to pay the fees and expenses of the inspector incurred in the inspection of any such boiler and a penalty of \$10 in addition thereto; fees, expenses, and penalty in all such cases may be sued for and recovered in any court of record, by and in the name of the people of the State of Colorado, in any county of the State, and it shall be the duty of the district attorney of the district wherein such county may be situated to prosecute all such suits.

SEC. 4198. The secretary of state shall provide a suitable office for said inspector, properly furnished and supplied with such tools, apparatus, and stationery as may be required.

SEC. 4199. The inspector of steam boilers provided for in this act shall, for every failure to perform his duties as herein directed, be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in a sum not less than \$100 nor more than \$1,000, or be imprisoned for a period of not less than two months nor greater than one year, or by both such fine and imprisonment.

SEC. 4200. The provisions of this act shall not apply to cities where city boiler inspectors are appointed under the provisions of the ordinances of said city.

#### CONNECTICUT.

SEC. 4890. The governor shall appoint, in each congressional district, a suitable person to inspect steam boilers used for manufacturing, heating, and mechanical purposes, who shall hold office for three years. Said inspector shall, as often as once in each year, carefully inspect every such boiler in his district, and, if he finds such boiler to be in good order and free from weakness and material defects, he shall give a certificate of inspection to the person using the same; but any company incorporated by any State of the United States for the purpose of making inspection of steam boilers, and that maintains a corps of steam-boiler inspectors, and has complied with the insurance laws of this State may issue certificates of inspection in lieu of those issued by the inspectors appointed by the governor: *Provided*, A policy of insurance is issued covering loss or damage to person or property arising from the explosion of the boiler or boilers so inspected; and the boilers on which such certificates have been issued shall be exempt from inspection by the steam-boiler inspectors of the State.

SEC. 4891. If said inspector finds any boiler out of order, materially weak, or defective, he shall advise its owner, lessee, or user as to its necessary repairs, and if such



repairs are not made he may call in the inspector from an adjoining district, and if they agree that such boiler is not in proper condition, they shall give written notice to its owner, lessee, or user not to use it until such repairs are made as said inspectors shall specify, or if they are of the opinion that it is utterly worthless, or that its use will endanger the public safety, they shall forbid its use.

SEC. 4892. The provisions of sections 4890 and 4891 shall not apply to any city or town having a system of boiler inspection, unless accepted and adopted by it.

SEC. 4894. Every person who shall neglect or refuse to have any steam boiler used by him inspected, or shall suffer it to carry a greater pressure of steam than is allowed by the certificate of the inspector, shall be fined not more than \$200.

SEC. 4895. Every person who shall use any steam boiler after its use is forbidden by the inspector shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

SEC. 4896. Every inspector who shall willfully and knowingly falsely certify to the condition of any boiler inspected by him, or who shall issue a certificate without having made a careful inspection, as provided in section 4890, shall be fined not more than \$500, or imprisoned not more than six months, or both.

SEC. 4897. The provisions of this chapter shall not apply to the boilers of locomotive engines or to boilers used exclusively for heating private residences.

# INDIANA.

[Act of 1903, chapter 246.]

SECTION 1. It shall be the duty of every person, firm, or corporation owning or using or causing to be used any steam boiler for generating steam to be applied to machinery in all industrial institutions, subject to inspection by the department of inspection, shall [sic] provide them with a full complement of gauge cocks, some visible means of indicating the water level, one steam gauge, one fusible plug properly inserted, one safety valve, all to be kept in good working order (the area of said valve, if known as a pop valve, shall be in the ratio of one square inch of area to three square feet of grate surface), a lever and ball safety valve in the ratio of one square inch of area to two square feet of grate surface: *Provided*, That fusible plugs shall be required only in boilers having crown sheets.

SEC. 2. The owner, agent, manager, or lessee of any boiler or boilers described in section 1 of this act, of 10 or more horsepower, shall cause such boiler or boilers to be inspected, internally, once in six months by a practical boiler maker of not less than five years' experience; or a practical steam engineer who has had less not than ten years' experience with steam boilers carrying not less than 70 pounds pressure per square inch; or by a boiler inspector of any company doing business under the laws of the State, who shall furnish to the owner, agent, or lessee of such boiler a certificate of inspection stating the kind and showing the condition of said boiler, the connections, and the maximum pressure to be carried by said boiler; such certificate to be retained in the office of said establishment and to be shown to the chief inspector of the department of inspection or his deputy when required.

SEC. 3. Every boiler house in which a boiler, or nest, or battery of boilers is placed shall be provided with a steam gauge or gauges, properly connected with the boilers, and where the engine is in a separate room, or more than 40 feet distant from the gauge or nearest boiler, shall have another gauge, attached to the steam pipe, so the engineer can readily ascertain the pressure carried. The safety valves of steam boilers subject to inspection under this act shall be loaded to sustain only the maximum pressure allowed by said certificate of inspection.

SEC. 4. The prosecuting attorney of any county of this State is hereby required upon request of the chief inspector of the department of inspection, his deputy, or any other person of full age, to commence and prosecute to a termination before any court of competent jurisdiction, in the name of the State, actions or proceedings against any person, firm, or corporation reported to him to have violated the provisions of this act.

SEC. 5. It shall be unlawful for any person, firm, or corporation to knowingly operate any aforesaid boilers except as provided for in this act, and for the violation of sections 1 or 3 a fine of not less than \$10 nor more than \$25 shall be assessed for each offense. Each day such violation or violations continue shall constitute a separate offense. Any person, firm, or corporation knowingly failing to comply with section 2 of this act, or any order issued by the department of inspection in accordance therewith, shall be fined not less than \$25 nor more than \$100.

## IOWA.

SECTION 5026. Any person owning or operating steam boilers in this State shall provide the same with steam gauge, safety valve, and water gauge, and keep the same in good order. Any person neglecting so to do shall be fined not less than \$50 nor more than \$500.

## MAINE.

[Chapter 22.]

SECTION. 22. No person or corporation shall manufacture, sell, use or cause to be used, except as hereinafter provided, any steam boiler in the State unless it is provided with a fusible safety plug, made of lead for boilers carrying steam pressure above 50 pounds per square inch, and of tin for boilers carrying steam pressure of 50 pounds and less per square inch, and said safety plug shall be not less than one-half inch in diameter, and shall be placed in the roof of the fire box when a fire box is used, and in all cases shall be placed in the part of the boiler fully exposed to the action of the fire, and as near the surface line of the water as good judgment shall dictate, excepting in cases of upright tubular boilers, when the upper tube sheet is placed above the surface line of the water, which class of boilers shall be exempted from the provisions of this section.

SEC. 23. If any person without just and proper cause removes from the boiler the safety plug, or substitutes any material more capable of resisting the action of the fire, or if any person or corporation uses or causes to be used, for six consecutive days, or manufactures or sells a steam boiler of a class not exempted from the provisions of the preceding section, unprovided with such safety fusible plug, such offender shall be fined not exceeding \$1,000.

## MARYLAND.

[Article 4, revision of 1898; chapter 123, acts of 1898.]

SECTION 572. The governor shall biennially appoint two suitable persons who are well skilled in the construction and use of steam engines and boilers, and in application of steam thereto, whose duty it shall be to inspect steam boilers in the city of Baltimore, as hereinafter specified and directed; said inspectors, before entering on their duties, shall make oath before a justice of the peace, \* \* \* that they are not, and will not during their term of office, be connected with or interested in the manufacture of steam boilers, engines, or machinery applicable thereto. \* \* \*

SEC. 573. The city of Baltimore is divided into two districts, which shall be known as the first and second steam-boiler inspection districts. \* \* \*

SEC. 574. The inspectors, before entering on the discharge of their duties, shall provide themselves with an office in a central part of said city, also with the necessary apparatus and appliances for the testing of steam boilers; and they shall give notice for three successive days, through the two daily papers having the largest circulation in said city, of the time and manner in which they shall receive the reports of the locations of steam boilers.

SEC. 575. Every owner or renter using a steam boiler in said city shall, within ten days after the publication of the aforesaid notice, report to the inspector of the district the location of such boiler, under a penalty of \$50 for each day a boiler is used and neglected to be reported.

SEC. 576. The inspector of each district shall give six days' notice in writing to each owner or renter of a steam boiler, or the engineer or person in charge, of the time when he will inspect such boiler; and such owner or renter shall have such boiler ready for inspection, in compliance with the requirements of said notice, and shall furnish such assistance as the inspector may require, under a penalty of \$50 for such failure or neglect, and a further penalty of \$50 for each day any such boiler is used without a certificate of inspection.

SEC. 577. It shall be the duty of each inspector, once at least in every year, to inspect all stationary steam boilers of 3 horsepower and upward, used within the limits of his district, subjecting them to a hydrostatic test of at least 25 per cent in excess of the steam pressure allowed and satisfy himself, by a thorough external and internal examination (if possible), with a hammer, that the boilers are free from danger from corrosion or other defects, are well made of good material, the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of proper dimensions, and free from obstruction; that the flues and tubes, if any, are circular in form, the furnaces in proper shape, and the fire line of the furnaces is at least 2 inches below the minimum water line of the boilers; and shall also satisfy

himself that the safety valves are of suitable dimensions, sufficient in number and well arranged, and that the weights are properly adjusted so as to allow no greater pressure in the boiler than the amount prescribed in the certificate of inspection; that there is a sufficient number of gauge cocks, a steam gauge, a coupling cock in suitable position for attaching the hydrostatic test, that means for blowing out are provided, so as to thoroughly remove the mud and sediment from all parts of the boilers when they are under the pressure of steam, and that fusible metals are properly inserted so as to fuse by the heat of the furnaces when the water in the boilers shall fall below the prescribed limits, and that adequate and certain provision is made for an ample supply of water at all times; when the inspection is completed and the inspector approves the boiler, he shall make and subscribe a certificate of inspection, stating the condition of the boiler, the number of years or months it has been in use, and the pressure of steam allowed; and no greater pressure than that allowed by the certificate shall be applied to such boiler. In limiting pressure, whenever the boiler under test will, with safety, bear the same, the limit desired by the owner shall be the one certified; and such certificate of inspection shall be framed under glass, and kept in some conspicuous place on the premises where said boiler referred to is used; and if the inspector shall deliver or cause to be delivered to the owner or renter of any boiler a certificate of inspection without having first subjected the said boiler to the tests as herein provided, he shall forfeit his bond, and upon conviction shall be removed from office by the governor.

SEC. 578. In addition to the annual inspection, it shall be the duty of the inspector to examine all boilers within the limits of their respective districts once at least in every three months, and, if deemed necessary, apply the hydrostatic test; and if on such examination the inspector shall find evidence of deterioration in strength, he shall revoke the certificate and issue another, assigning a lower rate of pressure; and if the defect be of such character as to make the boiler dangerous, the inspector shall notify the owner or renter in writing, stating in the notice what is required, and order the use of the boiler discontinued until the necessary repairs are made; and if he considers it beyond repair, he shall condemn it; and if the owner or renter shall refuse or neglect to comply with the requirements of the inspector, and shall, contrary thereto, and while the same remains unreversed, use the boiler, he shall be liable to a penalty of not less than \$100 for each day such boiler is used, and in addition thereto shall be liable for any damage to persons or property which shall occur from any defects, as stated in the notice of the inspector.

SEC. 579. Any owner or renter of a boiler, who shall consider himself aggrieved by the action of the inspector, under the provisions of the preceding section, may, within ten days after such inspection, notify the inspector of the fact, and demand a reexamination of the said boiler; the owner or renter shall select a practical engineer, who, with the inspector, shall select a third person, skilled in the manufacture and use of steam-boilers, which said two persons, after taking an oath as reviewers, shall, together with the inspector, carefully examine the said boiler, and the decision of any two of these shall be final; should the decision of the inspector be sustained, the said owner or renter shall pay the expense of such review; but should it be reversed, the inspector shall restore the certificate, and the expense of the review shall be paid by the State; such reviewers shall receive \$5 for each day or part of a day they are engaged in making such review.

SEC. 580. Any person erecting or using a steam boiler without having the same inspected by the inspector of the district in which the said boiler is located shall pay a fine of \$100, and \$50 for each day any such boiler is used without being inspected; and any person who shall alter or change a steam gauge or weight on a safety valve for the purpose of carrying a greater pressure of steam on a boiler than that allowed by the certificate of inspection shall be liable to a fine of \$500; and any owner or renter of a steam boiler who shall neglect or refuse to place his certificate of inspection on the premises, as prescribed in section 577 hereof, shall pay a fine of \$5 for each day's refusal or neglect.

SEC. 583. It shall be the duty of each inspector to keep a correct record of the locations of all boilers in his district, when each boiler was inspected, the condition of the same at the time of inspection, the instructions given to the engineers in charge, the certificates issued, and the amount of steam pressure allowed in each certificate, and the boilers condemned or ordered to be repaired; also a correct account of all money received or paid out; and they shall report the same annually to the state comptroller.

SEC. 586. Every steam-boiler insurance company doing business in this State shall have a resident inspector, whose duty it shall be to make inspections of steam boilers submitted for insurance to such steam-boiler insurance company; and any owner or renter of a steam boiler who has the same insured in a steam-boiler insurance company

doing business in this State, in compliance with the laws thereof, and having a resident inspector and an established system of inspection, must immediately after the first annual inspection in each year by such resident inspectors of such steam-boiler insurance company, present to the state inspector of the district in which the said steam boilers are located the certificate of inspection of the said company; and the said company shall be charged and chargeable with a fee of \$1 for each and every boiler so inspected and insured, which shall be paid to the state inspector with such certificate: *Provided*, That when there is more than one steam boiler belonging to the same owner or renter so insured, then the fee so chargeable to the insurance company shall be \$1 per boiler for the first five and \$1 for each additional five or fraction thereof over and above the first five; and upon the acceptance of the provisions of this section by the owner or renter of said steam boiler the said owner or renter shall be exempted from the requirements of this subdivision of this article.

## MASSACHUSETTS.

[Acts of 1906, chapter 463—Part II.]

SECTION 173. The board of railroad commissioners may make and revise regulations for testing the boilers of locomotives, and shall communicate such revision to every person or corporation which operates a railroad in this Commonwealth. The tests under such regulations shall, if possible, be made by the master mechanic of the corporation, firm, or person which constructs, repairs, or uses such boilers. A person or corporation using a locomotive on a railroad in this Commonwealth the boiler of which has not been tested in accordance with the provisions of this section shall be punished by a fine of \$20 for every day during which such use continues, to the use of the Commonwealth.

[Chapter 521.]

SECTION 1. The governor is hereby authorized to appoint, as hereinafter provided, one of the members of the boiler-inspection department of the district police as chief inspector of said boiler-inspection department. Said chief inspector shall have supervision over the members of said boiler-inspection department in order to secure the uniform enforcement throughout the Commonwealth of all acts relative to the inspection of boilers and the examination of engineers and firemen. Said chief inspector shall receive an annual salary of \$2,000 and his actual and necessary traveling expenses.

SEC. 2. As soon as practicable after the passage of this act the civil-service commissioners shall hold an examination to determine the qualifications of applicants for the position of said chief inspector. The commissioners shall certify to the governor the names of the three persons receiving the highest percentage on such examination and the percentage obtained by each, and the governor shall appoint one of said three persons as chief inspector of the boiler-inspection department.

[Chapter 522.]

SECTION 1. The governor is hereby authorized and directed to appoint five additional members of the inspection department of the district police, who shall be not above 45 years of age. Said age limit shall apply to all new appointments to said boiler-inspection department, but shall not apply to any reappointment thereto. They shall be detailed for the inspection of boilers, and shall receive the same compensation now received by the present inspectors of boilers. The governor is also hereby authorized to appoint one clerk, at an annual salary of \$800, to serve in the said department, and four additional clerks, at an annual salary of \$600 each, to serve at branch offices in the said department.

[Acts of 1907, chapter 451.]

SECTION 1. The governor is hereby authorized and directed to appoint five additional members of the boiler-inspection department of the district police, who shall be licensed engineers having not less than five years' experience, and who shall be not above 45 years of age. The said age limit shall apply hereafter to all new appointments in said boiler-inspection department, but shall not apply to any reappointment therein. The said five additional members shall be detailed for the inspection of boilers and the examination of engineers and firemen, and shall receive the same compensation now received by the present inspectors of boilers. \* \* \*

[Chapter 465, as amended by chapter 563, acts of 1908.

SECTION 1. All steam boilers and their appurtenances, except boilers of railroad locomotives, motor road vehicles, boilers in private residences, boilers in public buildings and in apartment houses used solely for heating, and carrying pressures not exceeding 15 pounds per square inch and having less than 4 square feet of grate surface, boilers of not more than three horsepower, boilers used for horticultural and agricultural purposes exclusively, and boilers under the jurisdiction of the United States, shall be thoroughly inspected internally and externally at intervals of not over one year, and shall not be operated at pressures in excess of the safe working pressure stated in the certificate of inspection hereinafter mentioned, which pressure is to be ascertained by rules established by the board of boiler rules, to be appointed as hereinafter provided, and shall be equipped with such appliances to insure safety of operation as shall be prescribed by said board. All such boilers installed after January 1, 1908, shall be so inspected when installed. No certificate of inspection shall be granted on any boiler installed after May 1, 1908, which does not conform to the rules formulated by the board of boiler rules.

SEC. 2. Whoever owns, or uses or causes to be used, any such boiler, unless the same is under the periodically guaranteed inspection of insurance companies authorized to insure boilers in this Commonwealth, shall annually report to the chief of the district police the location of such boiler.

SEC. 3. All such boilers shall also be inspected externally at least once each year when in operation, and it shall be the duty of the inspector to observe the pressure of steam carried, and the general condition of each boiler, and to ascertain if the safety valve and the appliances for indicating the pressure of steam and level of water in the boiler are in proper working order. No person shall remove or tamper with any safety appliance prescribed by the board of boiler rules, and no person shall in any manner load the safety valve to a greater pressure than that allowed by the certificate of inspection.

SEC. 4. The inspection of boilers and appurtenances shall be made by the boiler-inspection department of the district police, under the supervision of the chief inspector of boilers, or by inspectors of such insurance companies as have complied with the laws of the Commonwealth and are authorized to insure steam boilers. Inspectors of boilers in the boiler-inspection department hereafter appointed shall not be subject to the rules of the civil-service commission requiring members of the district police to be of a certain height and weight, but shall be appointed solely on the basis of their ability and competency properly and thoroughly to inspect steam boilers.

SEC. 5. No person shall act as an inspector of boilers which are under the periodically guaranteed inspection of companies that have complied with the laws of this Commonwealth, unless he holds a certificate of competency as hereinafter provided.

SEC. 6. Whoever desires to act as an inspector of boilers, as specified in section 5, shall make application upon blanks to be furnished by the chief of the District police. Three members of the boiler inspection department shall act as a board of examiners. The application shall show the total experience of the applicant and shall be accompanied by a letter of request for his examination from the boiler insurance company by whom he is or is to be employed. Willful falsification in the matter of any statement contained in the application shall be deemed sufficient cause for the revocation of said certificate at any time. The applicant shall be examined as to his knowledge of the construction, installation, maintenance, and repair of steam boilers and their appendages, and, if found competent, he shall receive a certificate of competency to inspect steam boilers for the boiler insurance company by whom he is or is to be employed, and the certificate shall continue in force during his employment by said company unless revoked for incompetency or untrustworthiness. When a person ceases to be employed as an inspector by a boiler insurance company the insurance company shall notify the chief of the District police of the matter, giving the reasons therefor. A period of ninety days shall elapse between the dates of examinations, except in the case of an appeal as hereinafter provided. The certificate of competency shall be revoked for the incompetency or untrustworthiness of the holder thereof, and shall remain revoked until a new certificate is issued. If a certificate is lost by fire or other cause a new certificate shall be issued in its place, upon satisfactory proof of such loss, without examination.

SEC. 7. A person who is refused a certificate of competency, or whose certificate is revoked, may appeal from such decision to the chief of the district police, who shall grant a rehearing of the case by a board of five examiners, no one of whom shall have acted as an examiner in the former instance, whose decision shall be final if approved by the chief of the district police. The applicant shall have the privilege of having one representative of the boiler insurance company by whom he is or is to be employed present during an examination or the hearing of an appeal.

SEC. 8. Any steam boiler insurance company which issues a certificate of inspection signed by an inspector who does not hold a certificate of competency may have its authority to insure steam boilers revoked by the commissioner of insurance for the Commonwealth. Any person in the employ of a steam boiler insurance company who applies for a certificate of competency as an inspector of boilers before this act takes effect shall be authorized to inspect boilers until his application is passed upon by the proper authority.

SEC. 9. The inspectors of the boiler-inspection department of the district police shall make reports of all inspections and shall make such recommendations to the chief inspector of boilers as they may deem expedient.

SEC. 10. Every insurance company authorized to insure steam boilers within the Commonwealth shall forward to the chief inspector of boilers, within fourteen days after each internal and external inspection of boilers herein required to be inspected, reports of all boilers so inspected by it. Such reports shall be made on blanks furnished by the chief inspector of boilers, and shall contain all orders made by the company regarding the boilers so inspected.

SEC. 11. Every boiler-insurance company shall report immediately to the chief inspector of boilers the name of the owner or user and the location of every boiler herein required to be inspected, upon which they have canceled or refused insurance, giving the reasons for so doing.

SEC. 12. Boilers and their appurtenances used exclusively for heating purposes, but which are not herein required to be inspected, shall be provided with such appliances to insure safety as shall be prescribed by the board of boiler rules, and it shall be the duty of the boiler-inspection department to inspect such boilers upon application of the owner.

SEC. 13. The owner or user of a boiler herein required to be inspected which is not insured by a boiler-insurance company, shall, after due notice, prepare the boiler for internal and external inspection, at the appointed time, by drawing the water from the boiler and removing the manhole and hand-hole plates. The boiler-inspection department shall give the owner at least fourteen days' notice to prepare boilers for this inspection, but shall not be required to give notice of external inspection.

SEC. 14. The owner or user of a boiler inspected by the boiler-inspection department shall pay to the inspector \$5 for each boiler internally and externally inspected, and \$2 for each visit for external inspection. The inspector shall give receipts for the same, and shall pay all sums so received to the chief inspector of boilers, who shall pay the same to the treasurer of the Commonwealth.

SEC. 15. If, upon inspection, the inspector finds the boiler to be in safe working order, with the fittings necessary to safety, and properly set up, he shall issue to the owner or user thereof a certificate of inspection stating the maximum pressure at which the boiler may be operated, as ascertained by the rules established by the board of boiler rules, and thereupon such owner or user may operate the boiler mentioned in the certificate. If the inspector finds that the boiler is not in safe working condition, or is not provided with fittings necessary to safety, or if the fittings are improperly arranged, he shall withhold his certificate until the boiler and its fittings are put in a condition to insure safety of operation, and the owner or user shall not operate the boiler, or cause it to be operated, until such certificate has been granted.

SEC. 16. Every boiler which has been inspected by the boiler inspection department shall be numbered either by stamping the number upon the boiler or by attaching a numbered metal tag by a seal or otherwise to the boiler or its fittings. No person except a member of the boiler inspection department shall deface or remove any such number or tag.

SEC. 17. Insurance companies engaged in the business of inspecting and insuring steam boilers shall, after each internal and external inspection, if they deem the boiler to be in safe working condition, issue a certificate of inspection stating the maximum pressure at which the boiler may be operated. This maximum pressure shall be determined under the rules established by the board of boiler rules.

SEC. 18 [as amended by chapter 563, acts of 1908]. No insurance company shall issue a policy of insurance on a steam boiler for a longer period than three years. If a boiler is insured which has not previously been inspected externally and internally and a certificate of inspection issued, the company so insuring shall forthwith notify the chief of the boiler inspection department of the district police to that effect, and shall inspect such boiler internally and externally within one month after the insurance is effected. No insurance shall be effected on any boiler installed after May 1, 1908, which does not conform to the rules formulated by the board of boiler rules.

SEC. 19. The certificate of inspection issued by the boiler inspection department, or by any insurance company, shall state the name of the owner or user, the location,

size, and number of the boiler, the date of inspection, and the maximum pressure at which the boiler may be operated, under the signature of the person who made the inspection, and shall also contain such quotations from the statutes as shall be deemed necessary by the board of boiler rules, and shall so be placed as to be easily read in the engine room or boiler room of the plant where the boiler is located, except that the certificate of inspection for a portable boiler shall be kept on the premises and shall be accessible at all times.

SEC. 20. No person shall use, or cause to be used, a steam boiler, excepting boilers upon motor road vehicles, steam fire engines, boilers in private residences, or boilers under the jurisdiction of the United States, unless it is provided with a fusible safety plug made of lead or some other equally fusible material, as specified by the rules to be established by the board of boiler rules.

SEC. 21. The owner or user of any boiler herein required to be inspected shall immediately notify the boiler inspection department, if the boiler is being operated under the inspection of that department, or the insurance company, if it is being operated under its inspection, in case a defect affecting the safety of the boiler is discovered.

SEC. 22. If the insurance on any boiler herein required to be inspected expires, or is canceled because the insurers deem it unsafe to continue the operation of the boiler, the owner or user shall cease to operate it until it has been put in a safe condition, satisfactory to the insurers, or has been inspected by the boiler-inspection department and a certificate of inspection has been issued.

SEC. 23. If, in the judgment of the inspector or of the insurance company, it is advisable to apply a hydrostatic pressure test to a boiler, the owner or user shall prepare the boiler for such test, as directed by the inspector or by the insurance company.

SEC. 24. The governor, within thirty days after the passage of this act, with the consent of the council, shall appoint a board of five persons, to be known as the board of boiler rules, of whom the last four shall be appointed to serve as follows: Two for a term of two years each and two for a term of three years each. At the expiration of their terms of office their successors shall be appointed for terms of three years each. The members of the board, other than the chairman hereinafter designated, shall receive for their services the first year in office the sum of \$500 each. Thereafter they shall receive as compensation for their services and reimbursement for their expenses such amount as the governor and council shall order, not exceeding in the aggregate in any one year the sum of \$1,000. The board shall be constituted as follows: The chief inspector of the boiler-inspection department of the district police, who shall be its chairman; one member representing the boiler-using interests; one member representing the boiler-manufacturing interests; one member representing the boiler-insurance interests; and one member who is an operating engineer.

SEC. 25. The chief inspector of boilers of the boiler-inspection department of the district police shall appoint a clerk, who shall be a stenographer, and who shall also act as secretary of the board of boiler rules, and whose salary shall be \$1,200 a year. The necessary expenses of the board, including those of the secretary of the board, incurred in the discharge of their duty during the first year, shall be paid out of the treasury of the Commonwealth, but shall not exceed the sum of \$1,500 for that year. The attorney-general of the Commonwealth shall furnish all needed assistance to the board in the framing of the rules hereinafter provided for.

SEC. 26. It shall be the duty of the board of boiler rules to formulate rules for the construction, installation, and inspection of steam boilers, and for ascertaining the safe working pressure to be carried on said boilers, to prescribe tests, if they deem it necessary, to ascertain the qualities of materials used in the construction of boilers; to formulate rules regulating the construction and sizes of safety valves for boilers of different sizes and pressures, the construction, use, and location of fusible safety plugs, appliances for indicating the pressure of steam and the level of water in the boiler, and such other appliances as the board may deem necessary to safety in operating steam boilers; and to make a standard form of certificate of inspection.

SEC. 27. The rules so formulated shall be submitted to the governor for his approval, and when approved shall have the force of law, and shall be printed and furnished to those requesting them by the boiler-inspection department.

SEC. 28. The boiler-inspection department of the district police shall enforce the provisions of the preceding sections, and such rules as shall be promulgated by the board of boiler rules with the approval of the governor. Whoever violates any provision of this act or of the said rules shall be punished by a fine of not less than \$20 nor more than \$500 or by imprisonment for not more than six months, or by both such fine and imprisonment. A trial justice shall have jurisdiction of complaints for violation of the provisions of this act, and in such cases may impose a fine of not more than \$50. All members of the boiler-inspection department of the district police shall have authority in the pursuance of their duty to enter any premises on which a boiler is situated, and any person who hinders or prevents or attempts to prevent any member

of the boiler-inspection department from so entering shall be liable to the penalty specified in this section.

## MICHIGAN.

[Acts of 1899, act No. 209.]

SECTION 1. All stationary steam boilers operated or used, or caused to be operated or used, by any person, firm, or corporation within the State of Michigan shall, whenever so ordered by the chief factory inspector or any of his duly authorized deputies, have upon them some device which will sound an alarm for the purpose of calling the attention of the engineer, fireman, or person in charge of any such boiler to the depth of water in the boiler before the same reaches the danger point: *Provided*, That the kind of device or alarm so used shall be approved by the chief factory inspector of the State; and he or any of his duly authorized deputies shall be authorized to enter upon the premises of any person, firm, or corporation within this State for the purpose of inspecting any stationary steam boiler so used or operated.

SEC. 2. It shall be unlawful for any person, firm, or corporation to operate any stationary steam boiler without its having a low-water alarm attached thereto after the chief factory inspector or any duly authorized deputy has ordered the same to be used, as specified in section 1 of this act.

SEC. 3. Any person, the members of any firm, or the board of directors of any corporation violating any of the provisions of this act, or who shall refuse or neglect to comply with any such order made by the chief factory inspector or his duly authorized deputy, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than \$10 and cost of prosecution, or by imprisonment in the county jail of the county where such conviction shall be had, or in the state house of correction and reformatory at Ionia, for not less than six months nor more than one year, or both such fine and imprisonment, in the discretion of the court, for each and every offense.

## MINNESOTA.

SEC. 2168. In the month of January in every odd-numbered year the governor shall appoint a board of inspectors, consisting of one resident of each senatorial district, except that where there is more than one senatorial district in any county there shall be but one inspector in such county. Such inspector shall inspect all steam boilers in use in the State, not subject to inspection under the laws of the United States and not hereinafter excepted, and examine and grant certificates of license to steam engineers intrusted with the management of steam boilers, except those in heating plants in private residences. They shall examine and license all masters and pilots on inland waters of the State, as nearly as may be according to the regulations provided by the laws of the United States. Each shall hold office for the term of two years, commencing February 1, unless sooner removed by the governor. Annually on or before January 31 each shall render a report to the secretary of state, containing a detailed statement of the number of inspections made and licenses issued, the amount of fees received therefor, and the amount of disbursements of their offices. The secretary of state shall include in his biennial report a summary of such report.

SEC. 2169. Every boiler inspector shall be a man of good moral character, and qualified by experience in the construction of steam boilers, and shall have had at least ten years' actual experience in operating steam engines and boilers. He shall not be directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or in any patented article required or generally used in the construction of engines or boilers.

SEC. 2170. Each boiler inspector may appoint one or more deputies, who shall possess the same qualifications and have the same authority as are prescribed for inspectors in section 2169. Each such deputy, before entering upon the duties of his office, shall take and subscribe the oath required by law, and file the same with the secretary of state.

SEC. 2171. In February of each year said inspectors shall meet as a board, at the capitol in St. Paul, and establish regulations for the inspection of vessels and boilers, and for the performance of their other duties. They shall prescribe regulations for the inspection of the hulls, machinery, boilers, steam connections, fire apparatus, life-saving appliances, and equipments of all vessels propelled in whole or in part by steam and navigating the inland waters of the State, which shall conform as near as may be to the requirements of the United States in similar cases, and when approved by the governor such regulations shall have the force of law. They shall designate the number of passengers that each steam vessel may safely carry, and no such vessel shall carry a greater number than is allowed by the inspector's certificate. Any owner, master,



or other person violating any regulation prescribed by said board shall be guilty of a misdemeanor.

SEC. 2172. Every owner, lessee, or other person having charge of steam boilers, or any boat propelled in whole or in part by steam, not subject to inspection under the laws of the United States, shall cause the same to be inspected at least once each year by the boiler inspector; and every such owner, lessee, or person in charge who shall raise steam or operate such boilers and machinery without such inspection shall be guilty of a misdemeanor.

SEC. 2175. Such inspectors shall inspect all steam boilers and steam generators before the same shall be used, and all such boilers at least once each year thereafter. They shall subject all boilers to hydrostatic pressure or hammer test, and ascertain by a thorough internal and external examination that they are well made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of proper dimensions and free from obstructions; that the flues are circular in form; that the arrangements for delivering the feed water are such that the boilers can not be injured thereby; and that such boilers and their steam connections may be safely used without danger to life or property. They shall also ascertain that the safety valves are of suitable dimensions, sufficient in number, and properly arranged, and that the safety-valve weights are so adjusted as to allow no greater pressure in the boilers than the amount prescribed by the inspector's certificate; that there is a sufficient number of gauge cocks, properly inserted, to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and that the fusible metals are properly inserted so as to fuse by the heat of the furnace whenever the water in the boiler falls below its prescribed limit; and that provisions are made for an ample supply of water to feed the boilers at all times, so that in high-pressure boilers the water shall not be less than 3 inches above the top of the fire surface; and that means for blowing out are provided, so as to thoroughly remove the mud and sediment from all parts when under pressure of steam.

SEC. 2176. In subjecting high-pressure boilers to the hydrostatic test the inspector shall assume 125 pounds to the square inch as the maximum working pressure allowable for new boilers 42 inches in diameter, double riveted, and made in the best manner of plates one-fourth of an inch thick and of good material; but he shall rate the working power of all high-pressure boilers according to their strength compared with this standard, and in all cases the test applied shall exceed the working power allowed in the ratio of 165 to 110. In subjecting low-pressure boilers to hydrostatic tests, he shall allow as a working power for each new boiler a pressure of only three-fourths the number of pounds to which it has been so subjected. If any inspector is of opinion that any boiler will not safely allow so high a working pressure, he may, for reasons specially stated in his certificate, fix the pressure at less than the test pressure. No boiler or steam pipe, nor any of the connections therewith, which are made wholly or partly of bad material, or of cast iron, or which are unsafe from any cause, shall be approved. But this shall not be construed to prevent the use of any boiler or steam generator not constructed of riveted iron or steel plates, when the inspector is satisfied by evidence that such boiler or generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of riveted steel or iron plates.

SEC. 2177. Every person who shall construct a boiler or steam pipe or iron or steel plates known to be faulty or imperfect, or shall drift any rivet hole to make it come fair, or who shall deliver any such boiler for use, knowing it to be imperfect in its flues, flanging, riveting, bracing, or in any other of its parts, shall be guilty of a gross misdemeanor, and punished by a fine of \$200, one-half of which shall be paid to the informer.

SEC. 2178. In addition to the annual inspection, the inspectors at any time, when in their opinion such examination shall be necessary, shall examine all boilers which have become unsafe, and notify the owners or operators of any defect, and what repairs are necessary; and such a boiler shall not thereafter be used until so repaired. Every person operating any such boiler who fails to comply with the inspector's requirements shall be guilty of a misdemeanor, and also liable for damages to persons or property resulting therefrom.

SEC. 2179. Every steam boiler shall be provided with a fusible plug, of good Banca tin, inserted in the flues, crown sheet, or other parts of the boiler most exposed to the heat of the furnace when the water falls below the prescribed limits.

SEC. 2180. Every owner or manager of a steam boiler shall allow inspectors full access to the same, and every engineer operating the same shall assist the inspector in his examination and point out any known defect in the boilers or machinery in his charge. No person shall be intrusted with the operation of any steam boiler or steam machinery who has not received a license so to act, which license shall be renewed biennially. Every person who shall violate any provision of this section shall be guilty of a misdemeanor, and punished by a fine of not less than \$10 not more than \$50.

SEC. 2183. In making the inspection of boilers, machinery, or steam vessels, the inspectors may act jointly or separately, but shall in all cases verify the certificate of inspection. Every inspector who shall willfully certify falsely regarding any steam boiler or its attachments, or the hull and equipments of any steam vessel, or who shall grant a license to any person to act as engineer, master, or pilot contrary to the provisions of this chapter, shall be guilty of a felony, and be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the state prison for not more than one year, or by both. In addition to such punishment, he shall forthwith be removed from office.

SEC. 2184. After examination and tests, if the inspector shall find any steam boiler or generator safe and suitable for use, he shall deliver to the secretary of state a verified certificate, in such form as the board of inspectors shall prescribe, containing a specification of the tests applied and the working power allowed, a copy of which the inspector shall furnish to the owner of the boiler or generator, who shall post and keep the same in a conspicuous place on or near such boiler or generator. The inspector shall be entitled to a fee of \$3 for the inspection of each single boiler and its steam connections, and \$2 for each additional boiler when connected and inspected at the same time, payable on delivery of the certificate. The fee for an engineer's license, and for each biennial renewal, shall be \$1, which shall accompany the application.

SEC. 2185. All fees collected by inspectors under this chapter shall be retained by them as full compensation for their services, and be divided among them as determined at the annual meeting of the board of inspectors.

SEC. 2186. The provisions of this chapter shall not apply to railroad locomotives, to locomotive engineers employed by railroad companies, or to boilers insured by insurance companies and certified by their authorized inspectors to be safe.

#### MONTANA.

#### [Political code.]

SECTION 550. There must be appointed by the governor, by and with the advice and consent of the senate, one inspector of boilers, whose duty it is to inspect all steam boilers now in use in the State not subject to inspection under the laws of the United States, and to examine and grant licenses to steam engineers intrusted with the care and management of steam boilers and steam machinery. The salary of the inspector of boilers is \$2,400 per year, and his term of office is four years, unless sooner removed by the governor. The inspector of boilers must execute an official bond in the sum of \$5,000.

SEC. 551. No person is eligible to hold the office of inspector of boilers and steam machinery who has not had at least five years of actual practice in the operations of steam engines, steam boilers, and steam machinery, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold or in general use in the construction of steam boilers or steam engines.

SEC. 552 (as amended by chapter 45, acts of 1907). There shall be two assistant inspectors of boilers, each of whom shall be called assistant inspector of boilers. Such assistant inspectors must be persons who have had at least four years' practical experience in the operation of steam engines and boilers, and must be persons of temperate habits and good character and qualified to perform the duties of their office. They shall be appointed by the governor, by and with the advice and consent of the senate, and be subject to removal at the will of the governor. The salary of each assistant inspector shall be \$1,800 per year. Each assistant inspector must execute an official bond in the sum of \$2,500.

There shall be a clerk to the state boiler inspector, to be appointed by him, who shall also, when not engaged in duties as clerk of the state boiler inspector's office, perform such duties as clerk of the state quartz-mine inspector and state coal-mine inspector's office, as those offices may require. The salary of the clerk to the boiler inspector shall be \$1,500 per year, and the clerk must execute an official bond in the sum of \$2,000.

SEC. 553 (as amended by chapter 32, acts of 1905). The inspector of boilers must have his office at the seat of government, and must adopt rules as nearly uniform as possible for the inspection of steam boilers, and prescribe the nature and extent of the examination of applicants for licenses, and adopt such rules for the issuing thereof as are required by the provisions of this article, and must adopt such rules as he may deem necessary to carry into effect the provisions of this article, and distribute copies of such rules among the engineers, superintendents of mines and mining companies of the State, and all persons having charge or control of steam machinery.

SEC. 554. The inspector of boilers must inspect all steam boilers and steam generators before the same are used, except in the case of new boilers, which must be inspected within ninety days after they are put in use, unless accompanied by a certificate that such boiler has been inspected by a regular state inspector, and all boilers must be inspected at least once in every year. And the inspector of boilers must subject all boilers to hydrostatic pressure, and satisfy himself by a thorough internal and external examination that the boilers are well made and of good and suitable materials; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in form; that the fire line of the furnace is at least 2 inches below prescribed minimum water line of the boilers; that the arrangement for delivering the feed water is such that the boilers can not be injured thereby, and that such boilers and their steam connections may be safely employed without danger to life.

SEC. 555. He must also satisfy himself that the safety valves are of suitable dimensions, sufficient in number and area, and properly arranged, and that the safety valve weights are properly adjusted, so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply to feed boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove the mud and sediment from all parts of the boilers when they are under pressure of steam. In subjecting boilers to the hydrostatic test, the inspector must assume 125 pounds to the square inch as the maximum pressure allowable as a working pressure for new boilers of 42 inches in diameter, made in the best manner, of plates one-fourth of an inch thick, and of good material; but the inspector must rate the working power of all high-pressure boilers according to their strength as compared with this standard, and in all cases the test applied must exceed the working pressure allowed, in the ratio of 100 to 75. Should the inspector be of the opinion that any boiler, by reason of its construction, or material, will not safely allow so high a working pressure, or will allow a greater working pressure than is herein provided, he may, for reasons to be stated specifically in his certificate, fix the pressure of such boiler at more or less than three-fourths of the test pressure, as the case may be.

SEC. 556. No boiler or steam pipe, nor any of the connections thereto, must be approved which is made in whole or in part of bad material or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates. In any case where for good cause the inspector is unable to make any such inspection or examination of any steam boiler it is the duty of the assistant inspector to proceed and act in accordance with the requirements of this article as fully as the inspector is empowered to do.

SEC. 557. In addition to the annual inspection, it is the duty of the inspector or of the assistant inspector to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause, and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

SEC. 558. It is the duty of the owners or managers of steam boilers to allow the inspectors free access to the same, and the engineer operating the same must assist the inspectors in their examinations and point out any defects they may know in the boilers or machinery in their charge. Any engineer not complying with this section shall have his license revoked or be suspended.

SEC. 562. In making the inspection of boilers and machinery herein provided for, the inspectors may act jointly or separately; but the inspector or assistant inspector, making such inspection, must in all cases subscribe and make oath to the certificate of inspection, and report such action. Any inspector or assistant inspector who willfully and falsely certifies regarding any steam boilers or their attachments, or grants a license to any person to act as engineer, contrary to the provisions of this article, is punishable under the provisions of section 635 of the Penal Code.

SEC. 536 (as amended by chapter 32, acts of 1905). The inspector or assistant inspectors are authorized to charge a fee of \$10 for the inspection of each single boiler and its steam connections, and \$5 for each additional boiler when connected. The fee for the inspection of each traction engine or boiler on wheels shall be \$10. The fee for the inspection of boilers in incorporated cities shall be \$5. Such fees shall be payable at the time of the delivery of the inspector's certificate of inspection. The fee for the examination of applicants for engineers' licenses is \$7.50 for first-class engineers, \$5 for second-class engineers, \$3 for third-class engineers, and \$3 for traction engineers; to

be paid at the time of the application for license. In case of the failure of any applicant to pass a successful examination ninety days must elapse before he can again be examined as an applicant for license in the class for which he was examined. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineer's licenses must be displayed in a conspicuous place in the engine room.

Sec. 566 (as amended by chapter 32, acts of 1905). This article does not apply to locomotives in Montana, nor to boilers used for heating purposes in private residences, nor to any boiler having a capacity of only 5 horsepower or less; nor are locomotive engineers or persons operating any of the engines or boilers herein exempted from the operation of this article required to procure licenses from the inspector or assistant inspectors. It shall be the duty of the owner or user of any traction engine or boiler on wheels, other than locomotives, to notify the inspector of the location of such boiler on or before the 1st day of June in each year. Any owner or user of such engine or boiler failing to so notify the inspector shall be punished by a fine or [of] not less than \$25 nor more than \$100.

Sec. 569. All violations of the provisions of this article [sections 550 to 568, inclusive] are provided for in the Penal Code, sections 633 to 635 and 657.

Sec. 570 (added by chapter 32, acts of 1905). Any person who offers for sale within this State a boiler subject to the provisions of this article, which has been in use and is out of service, or who brings into the State and places in service any such boiler which has theretofore been in use in any other State, without first notifying the boiler inspector, and having such boiler inspected, and securing from the inspector a certificate of such inspection, shall be punished by a fine of not less than \$100 nor more than \$500 for each offense.

[Penal code.]

SECTION 657. Every person who violates any of the provisions of \* \* \* [sections 550 to 569, inclusive] of the Penal Code, relating to boiler inspection, except as otherwise provided, is guilty of a misdemeanor.

NEW YORK.

[Birdseye's Revised Statutes—Third edition.]

SECTION 91. All boilers used for generating steam or heat for factory purposes shall be kept in good order, and the owner, agent[,], manager or lessee of such factory shall have such boilers inspected by a competent person, approved by the factory inspector, once in six months, and shall file a certificate showing the result thereof in such factory office and a duplicate thereof in the office of the factory inspector. Each boiler or nest of boilers used for generating steam or heat for factory purposes shall be provided with a proper safety valve and with steam and water gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every boiler house in which a boiler or nest of boilers is placed shall be provided with a steam gauge properly connected with the boilers, and another steam gauge shall be attached to the steam pipe in the engine house, and so placed that the engineer or fireman can readily ascertain the pressure carried. Nothing in this section shall apply to boilers in factories which are regularly inspected by competent inspectors acting under the authority of local laws or ordinances.

Sec. 49a (added by chapter 611, acts of 1905; amended by chapter 208, acts of 1907). It shall be the duty of every railroad corporation operated by steam power within this State, and of the directors, managers, or superintendents of such railroad, to cause thorough inspections to be made of the boilers and their appurtenances of all the steam locomotives which shall be used by such corporation or corporations on said railroad. Said inspections shall be made at least every three months, under the direction and superintendence of said corporations, or the directors, managers, or superintendents thereof, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers, and who from their knowledge of the construction and use of boilers and the appurtenances therewith connected, are able to form a reliable opinion of the strength, form, workmanship, and suitability of boilers, to be employed without hazard of life, from imperfections in material, workmanship, or arrangement of any part of such boiler and appurtenances. All such boilers so used shall comply with the following requirements: The boilers must be made of good and suitable materials; the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, low-water glass indicator, gauge cocks, and steam gauges shall be of such construction, condition, and arrangement that the same may

be safely employed in the active service of the railroad corporation without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully complied with. No boiler nor any connection therewith shall be approved which is unsafe in its form, or dangerous from defects, workmanship, or other cause. The person or persons who shall make the said inspections, if he or they approve of the boiler or boilers and the appurtenances throughout, shall make and subscribe his or their name to a written or printed certificate which shall contain the number of each boiler inspected, the date of its inspection, the condition of the boiler inspected, and such details as may be required by the forms and regulations which shall be prescribed by the railroad commissioner. Every certificate shall be verified by the oath of the inspector, and he shall cause said certificate or certificates to be filed in the office of the railroad commissioners within ten days after each inspection shall be made, and also a copy thereof with the chief operating officer or employee of such railroad having charge of the operation of such locomotive boiler; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with the locomotive boiler inspected, and there kept framed under glass. The railroad commissioners shall have power from time to time to formulate rules and regulations for the inspection and testing of boilers as aforesaid, and may require the removal of incompetent inspectors of boilers under the provisions of this act. Copies of such rules and regulations shall be mailed to every corporation operating a railroad by steam in this State. If it shall be ascertained by such inspection and test or otherwise that any locomotive boiler is unsafe for use, the same shall not again be used until it shall be repaired and made safe, so as to comply with the requirements of this section. Every corporation, director, manager, or superintendent operating such railroad and violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the State of New York, of \$100 for each offense, and the further penalty of \$100 for each day it or they shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor; and every inspector who willfully certifies falsely touching any steam boiler, or any appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. Any person, upon application to the secretary of said board of railroad commissioners, and on the payment of such reasonable fee as said board may by rule fix, shall be furnished with a copy of any such certificate.

SEC. 49b (added by chapter 611, acts of 1905). The state railroad commission shall appoint a competent person as inspector of locomotive boilers, who shall receive a compensation to be fixed by the commission, not exceeding \$3,000 per year. Such inspector shall, under the direction of the commission, inspect boilers or locomotives used by railroad corporations operating steam railroads within the State, and may cause the same to be tested by hydrostatic test, and shall perform such other duties in connection with the inspection and test of locomotive boilers as the commission shall direct. But this section shall not relieve any railroad corporation from the duties imposed by the preceding section.

SEC. 49c (added by chapter 208, acts of 1907). It shall be the duty of every corporation operating a steam railroad within this State, and of its directors, managers, or superintendents, to cause the boiler of every locomotive used on such railroad to be washed out as often as once every thirty days, and to equip each boiler with, and maintain thereon at all times, a water glass, showing the height of water in the boiler, having two valves or shut-off cocks, one at each end of such glass, which valves or shut-off cocks shall be so constructed that they can be easily opened and closed by hand; also to cause such valves or shut-off cocks and all gauge cocks or try cocks attached to the boiler to be removed and cleaned whenever the boiler is washed out pursuant to the foregoing requirements of this section; also to keep all steam valves, cocks, and joints, studs, bolts, and seams in such repair that they will not at any time emit steam in front of the engineer, so as to obscure his vision. No locomotive shall hereafter be driven in this State unless the same is equipped and cared for in conformity with the provisions of this section; but nothing here contained shall be construed to excuse the observance of any other requirement imposed by this chapter upon railroad corporations, their directors, officers, managers, and superintendents. Every corporation, person, or persons operating a steam railroad and violating any of the provisions of this section shall be liable to a penalty of \$100 for each offense, and the further penalty of \$10 for each day that such violation shall continue. The board of railroad commissioners shall enforce the provisions of this act.

[Acts of 1901, chapter 466, amending the charter of Greater New York.]

SECTION 342. Every owner, agent, or lessee of a steam boiler or boilers in use in the city of New York shall annually, and at such convenient times and in such manner and in such form as may by rules and regulations to be made therefor by the police commissioner be provided, report to the said department the location of each steam boiler or boilers, and thereupon, and as soon thereafter as practicable, the sanitary company or such member or members thereof as may be competent for the duty herein described, and may be detailed for such duty by the police commissioner shall proceed to inspect such steam boilers, and all apparatus and appliances connected therewith; but no person shall be detailed for such duty except he be a practical engineer, and the strength and security of each boiler shall be tested by atmospheric and hydrostatic pressure, and the strength and security of each boiler or boilers so tested shall have, under the control of said sanitary company, such attachments, apparatus, and appliances as may be necessary for the limitation of pressure, locked and secured in like manner as may be from time to time adopted by the United States inspectors of steam boilers or the Secretary of the Treasury, according to act of Congress, passed July 25, 1866; and they shall limit the pressure of steam to be applied to or upon such boiler, certifying each inspection and such limit of pressure to the owner of the boiler inspected, and also to the engineer in charge of same, and no greater amount of steam or pressure than that certified in the case of any boiler shall be applied thereto. In limiting the amount of pressure, wherever the boiler under test will bear the same, the limit desired by the owner of the boiler shall be the one certified. Every owner, agent, or lessee of a steam boiler or boilers in use in the city of New York shall, for the inspection and testing of such or each of such boilers, as provided for in this act, and upon receiving from the police department a certificate setting forth the location of the boiler inspected, the date of such inspection, the persons by whom the inspection was made, and the limit of steam pressure which shall be applied to or upon such boiler or each of such boilers, pay annually to the police commissioner for each boiler, for the use of the police pension fund, the sum of \$2, such certificate to continue in force for one year from the granting thereof, when it shall expire, unless sooner revoked or suspended. Such certificate may be renewed upon the payment of a like sum and like conditions, to be applied to a like purpose. It shall not be lawful for any person or persons, corporation or corporations, to have used or operated within the city of New York any steam boiler or boilers, except for heating purposes and for railway locomotives, without having first had such boiler or boilers inspected or tested and procured for such boiler or each of such boilers so used or operated the certificate herein provided for. The superintendent and inspectors of boilers in the employ of the police department in the city of Brooklyn, and the boiler inspectors in Long Island City, shall continue to discharge the duties heretofore devolved upon them, subject, however, to removal for cause, or when they are no longer needed.

Sec. 344. A correct record in proper form shall be kept and preserved of all inspections of steam boilers made under the direction of the police board, and of the amount of steam or pressure allowed in each case, and in cases where any steam boiler or the apparatus or appliances connected therewith shall be deemed by the department, after inspection, to be insecure or dangerous, the department may prescribe such changes and alterations as may render such boilers, apparatus, and appliances secure and devoid of danger. And in the meantime, and until such changes and alterations are made and such appliances attached, such boiler, apparatus, and appliances may be taken under the control of the police department and all persons prevented from using the same, and in cases deemed necessary, the appliances, apparatus, or attachment for the limitation of pressure may be taken under the control of the said police department.

Sec. 345. It shall not be lawful for any person or persons to apply or cause to be applied to any steam boiler a higher pressure of steam than that limited for the same in accordance with the provisions of this chapter, and any person violating the provisions of the last preceding section shall be guilty of a misdemeanor. In case any owner of any steam boiler in the said city shall fail or omit to have the same reported for inspection, as provided by law, such boiler may be taken under the control of the police department and all persons prevented from using the same until it can be satisfactorily tested, as hereinbefore provided for, and the owner shall, in such case, be charged with the expense of so testing it.

#### OHIO.

SECTION 4364-89h (as amended by act, page 311, acts of 1902). All stationary steam boilers operated or used, or caused to be operated or used, by any person, firm, or corporation within the State of Ohio shall have upon them a low-pressure safety-alarm column, which shall sound an alarm for the purpose of calling the attention of

the engineer, fireman, or person in charge of such boiler to the depth of water in the boiler before the same reaches the danger point. The said low-water safety-alarm column shall be a type capable of being tested easily by the chief examiner of steam engineers, or any of his district examiners, and shall be so connected with the boiler that the low-water alarm will be sounded when there is not less than 2 inches of water over the highest point of the tubes or crown sheets. The chief examiner of steam engineers, or any of his district examiners, shall be authorized to enter upon the premises of any person, firm, or corporation within this State for the purpose of inspecting any stationary steam boiler to ascertain as to whether it is equipped as herein provided.

Sec. 4364-89j (as amended by act, page 311, acts of 1902). It shall be unlawful for any person, firm, or corporation to operate any stationary steam boiler unless it is equipped with a low-water alarm column after the date \* \* \* [of this act].

Sec. 4364-89j (as amended by act, page 311, acts of 1902). Any person, the member of any firm, or the member of any board of directors of any corporation who shall violate any of the provisions of this act [secs. 4364-89h to 4364-89j], or shall refuse or neglect to comply with any of its provisions, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than \$25, nor more than \$50 and costs, or by imprisonment in the county jail of the county where conviction was had for a period of not less than thirty days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court for each and every offense.

# PENNSYLVANIA.

[Brightly's Pardon's Digest.]

Sec. 351. There shall be an inspector of steam engines and boilers in and for the city of Philadelphia, who shall be nominated by the mayor and confirmed by select council. The mayor shall appoint an advisory commission, consisting of five persons, either practically engaged in the manufacture of steam engines and boilers, or scientific experts familiar with their management, who shall give their written consent to serve on such commission without compensation, and perform the duties as hereinafter provided. Whenever the mayor shall have appointed all the members of the said commission as aforesaid, he shall call them together at such time and place as he may select for the purpose of organization and the adoption of such by-laws as to them may seem useful. The mayor is hereby authorized to have suitable accommodations provided for the use of said commission, and to furnish them with the requisite stationery and the services of a competent clerk. To this commission the mayor shall refer for examination such person or persons as he may consider suitable candidates for the office of inspector of steam engines and boilers, and the said commission shall inquire into the qualifications of such candidates without unnecessary delay, and report the result thereof to the mayor. In case the commission shall not report upon said candidate or candidates within thirty days from the time they have received notice of reference, or shall not have reported satisfactory reasons for longer delay, the mayor may discharge said commission and appoint another in its place. No appointment of inspector shall be confirmed by select council until the nominee shall have been reported by the aforesaid commission as qualified for the position. Whenever an appointment of inspector shall have been confirmed by select council, the duties of the advisory commission shall cease and determine, and all books, papers, and records shall be deposited in the mayor's office for the use of any subsequent commission.

Sec. 352. It shall be the duty of the inspector to carefully examine and inspect all stationary steam engines and steam boilers erected or in use at the time this goes into effect; and thereafter no stationary steam engine or steam boiler shall be erected and put into use and operation in the city of Philadelphia without being first inspected and certified to be competent and safe, under the hand and seal of the officer created by this act; and he shall furnish to the owner, proprietor, or other person using such engine or steam boiler a certificate under his hand and the seal of his office that it has been so inspected and found to be competent and safe; he shall, from time to time, and as often as he may deem expedient, examine all or any such engines or steam boilers in use or operation, and for such purpose he, together with his assistants, may enter upon any premises and require the removal of any part of the building, fixtures, or machinery, and he shall note in a book, to be kept for that purpose, the result of every such examination; and he shall at least once in every year make such examination, and give certificate of result thereof, whenever required.

Sec. 355. If any person shall maintain or keep in use or operation, or shall put in use or operation, any stationary steam engine or steam boiler within the said city of

Philadelphia without having first received a certificate that the same has been found to be safe and competent, as is hereinbefore provided for, or shall put or keep in use or operation any such stationary steam engine or steam boiler within the said city after notice from the said inspector that the same is not competent and safe, he or she so offending shall be deemed guilty of a misdemeanor, and upon conviction in the said court of quarter sessions for the said county, shall be sentenced to pay a fine not exceeding \$5,000, and to undergo imprisonment in the jail of said county, either with or without labor, as the court may direct, for a term not exceeding two years; and each and every such person shall be liable for all damages that may accrue, directly or indirectly, to any person or persons whatever.

[Acts of 1905—No. 226.]

SEC. 19. All boilers used for generating steam or heat in any establishment shall be kept in good order, and the owner, agent, or lessee of such establishment shall have said boilers inspected, by a casualty company in which said boilers are insured, or by any other competent person approved by the chief factory inspector, once in twelve months, and shall file a certificate showing the result thereof in the office of such establishment, and shall send a duplicate thereof to the department of factory inspection. Each boiler or nest of boilers used for generating steam or heat in any establishment shall be provided with a proper safety valve and with steam and water gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every boiler house in which a boiler or nest of boilers is placed shall be provided with a steam gauge, properly connected with the boilers, and another steam gauge shall be attached to the steam pipe in the engine house and so placed that the engineer or fireman can readily ascertain the pressure carried. Nothing in this section shall apply to boilers which are regularly inspected by competent inspectors, acting under local laws and ordinances.

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AFTER RECESS.

At the expiration of the recess the committee resumed its session.

The ACTING CHAIRMAN (Mr. Wagner). Gentlemen, do you wish to proceed now?

Mr. FAULKNER. Yes.

Mr. ROE. May I say a word?

The ACTING CHAIRMAN. Yes.

**ADDITIONAL STATEMENT OF MR. A. A. ROE, REPRESENTING  
THE BROTHERHOOD OF FIREMEN AND ENGINEMEN, AND  
BROTHERHOOD OF LOCOMOTIVE TRAINMEN.**

Mr. ROE. I would like to say a word with regard to the bill H. R. 17975.

Mr. Chairman, the full-crew bill, or what is known as the full-crew bill, which has been pending before this committee for some time, is a bill that was introduced, I believe, at the instigation of the organizations I represent. However, there has been a change of administration in the last year or so, and the new administration feels that the pressing of the full-crew bill at this time would be unwise, feeling that it is more a subject of state legislation than of national legislation; and we are endeavoring by state legislation to relieve ourselves of the injustice which we think we are suffering in this direction.

I desire to say that much, Mr. Chairman, in order to clarify the matter. Seemingly no one was here to support the bill, and the committee was wondering how the bill came here. What I have said is in the nature of an explanation. For myself, as an individual,



Mr. Chairman, as to the matter pending before the committee at this time, I have no hesitancy in saying that the principles contained in those measures have my hearty approval; and speaking from fifteen years' experience as a railroad man I believe that they are meritorious and deserving of consideration. That is all. I thank you very much.

Mr. FAULKNER. Mr. Chairman, I will now introduce Mr. Bernet, who will speak with reference to the bill H. R. 16879. It is our object to assign two or three of these gentlemen to each bill, so as to shorten as much as possible the investigation before the committee.

**STATEMENT OF MR. J. J. BERNET, GENERAL SUPERINTENDENT  
OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY,  
CLEVELAND, OHIO.**

Mr. BERNET. I want to speak first of my understanding of the application of the bill H. R. 16879. As I understand it, although others disagree with me, the bill is intended to apply only to engines used exclusively in yard service. I doubt whether Mr. Hawley and his colleagues who represent the Switchmen's Union of North America, and who have, as I understand it, absolutely no membership in road service, would undertake to press a bill that would in any way undertake to regulate road service. That is the principal reason for my having assumed that the bill refers only to yard engines. In its application, however, it would affect industries as well as railroads. When I speak of industries I have in mind two industries in particular located in the city of Erie, Pa. One is the Erie City Iron Works. They have a locomotive that does their internal switching, which takes the place of several teams and wagons. They will place a car in the boiler shop, and the boiler will be loaded on to the car. They will then switch it around to the machine shop, where it is assembled with the engine on their stationary equipment. They handle it that way rather than on a wagon. They do not use a full crew, but under this bill they would be required to. They have no use for it. They have, as I understand it, a foreman, and I think one brakeman. I know they do not have more than one, and I doubt whether they even have one.

Another industry in the same city is the Perry Iron Company. They have a small furnace, and have just started in in a small way; but they need the use of a locomotive for their internal work, and they have less men on their engine than this bill would provide for.

The ACTING CHAIRMAN. Do you regard those as being interstate locomotives?

Mr. BERNET. They handle freight that moves in interstate commerce—cars that move in interstate commerce—just the same as the railroads do.

The ACTING CHAIRMAN. But they are not engaged in interstate commerce at the time.

Mr. BERNET. No; but the bill as I read it—

Mr. FAULKNER. I would like to ask the witness, if I may be permitted, whether they do not, after the boiler is entirely assembled, bring the car to the railroad.

Mr. BERNET. Yes; they deliver it to the railroad eventually.

Mr. FAULKNER. Then it does go into interstate commerce.

Mr. BERNET. Eventually they deliver the car to the railroad.

The bill reads:

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property by railroad in the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country.

Then on the second page:

And to any person, firm, or corporation engaged in operating standard-gauge locomotive engines used for the purpose of switching cars or trains used in interstate traffic.

Those cars are used in interstate traffic.

Now, I want to say this about a reference that was made to the Lake Shore Railroad. That is the railroad I work for. I know something about its operation. I have charge of the operation of that railroad. I personally handle the matter of the engines that have been worked with crews that they have seen fit to term shorthanded on the Lake Shore Railroad, and I was much surprised to think that Mr. Harshbarger should mention the Lake Shore here, because with him and the men who have represented his membership on our railroad we have come to what I have always supposed was a satisfactory understanding as to what a crew should consist of on the Lake Shore Railroad. But I must assume from his attitude here to-day that he feels he has gotten everything from the Lake Shore Railroad that he can reasonably get, and now he wants to come here and undertake to enlist the aid of Uncle Sam in forcing us to do things that he does not feel he can reasonably take up with us any further. He spoke of the Delaware, Lackawanna and Western Railroad having worked 24 engines shorthanded, that railroad working from 46 to 50 engines. I was raised in the city of Buffalo as a boy, served my apprenticeship there as a railroad man, and I believe I know the Buffalo territory pretty thoroughly. I did think so. But if the Lackawanna Railroad is working 50 engines in Buffalo, I do not know anything about Buffalo territory.

The ACTING CHAIRMAN. About how many do you think they are working?

Mr. BERNET. The New York Central Railroad work 40 outside of Exchange street territory, and I should think they are working twice as many as the Lackawanna, at the lowest calculation.

Now, I want to talk about this question of general switching. I never switch any cars, but I have been around the yards a good deal, day and night. They talk about the yards being lumbered up where the men run along to cut cars. The cars are cut and uncoupled usually on the leads or ladders, and the tracks are generally free there from coal and drawbars and things of that kind, because that is not where the car gets its shock to shake off the coal and coke, that they complain of. That is not where the cars are stopped to make repairs, to take off the brake shoes and things of that kind, which they complain of. That is done in the lower yard, or what they call the field.

Now, the engines that do switching of that kind, and that require yard men, as they term them, are usually equipped with a foreman and 2 and 3 and as high as 15 helpers. I say as high as 15 helpers, but there are at times more than that—even 20. I have reference to

the hump yards, that do a great deal of that kind of switching or classifying.

They did give us credit there for undertaking to look after the economical operation of the railroad; but, on the other hand, they undertake to point out our short-sighted method of trying to operate locomotives with 4 high-priced men to two-thirds their capacity for the sake of saving one man. I do not believe there is any railroad in the country operating under such false economy.

I am not going to quarrel with them about the economy of trying to operate an engine with a short crew where any amount of work is to be done. I am going to agree with them absolutely. But we have cases of this kind: Take, for example, the last place where we put on a switching engine, called Otsego, Mich. There are some paper mills there, and we undertook to do the switching with our locals and way freights. That was not entirely satisfactory from a railroad standpoint, and it was not satisfactory from the industry's standpoint; so we put on a switch engine there that has four or five hours' switching a day to do, and we put on that engine an engineer, a fireman, conductor, or foreman, as they style them, and a helper. It was a question in my mind whether we ought to do it for the limited amount of work to be done there, but in order to satisfy our patron we did it. If we are compelled to put another man on there, and add another \$3 a day to the cost of operation, I question whether we will continue it. We will go back to the old method of trying to handle it the best we can with the way freights. There is any number of that kind of towns on our railroad, particularly on the branches. There is the town I just spoke of, Otsego, Mich. There is Grand Rapids, Mich.; Eagle Mills, Laporte, Ind.; Mishawaka, Ind.; Goshen, Ind.; Jonesville, Coldwater, Hillsdale, McGary, Jackson, Mich.; Fremont, Ohio; Franklin, Oil City—any number of towns of that kind, where we have one engine trying to do the work that is really too heavy for the locals and the way freights to do in such a way as to fairly take care of our customers. But the engine stands still so long that it actually gets flat wheels; and now they want us to put on another man, to put it that much heavier, so that the wheels will get that much flatter. There is only one reason why they want him on there, and that is to add another man to the pay roll and to make another man eligible to membership in their organization.

Now, we have a situation at Ashtabula Harbor, for example, where we are working quite a number of engines serving ore machines. They take hold of 4 or 5 cars, and spot 1 under the machine. The foreman stands at the engine, and the helper is up on the car alongside of it. When the man who operates the lever that puts the ore into the car fills it, the weighmaster says it is filled to its capacity, and the helper gives a signal to the conductor 5 car lengths away; he tells the engineer, and they move along a car length. Then they fill another car, and when they have filled that string of 5 or 8 or 10 cars they take them away and set them on another track, and another engine gets up under the machine. They have contended that we should put another brakeman on that engine. We have contended that we do not need him, and that we do not actually need one brakeman on there now with the foreman or conductor. We had a case two or three years ago where the general yardmaster went around to the switch shanty, and there he found 4 or 5 men off

of this so-called "crew" playing cards. They had time enough to spare men for a card game off of that short-crew engine. If you had another man, there would be two games of poker going on instead of one, and there would be more men to lose their jobs. I only speak of that as an extreme instance; but there is absolutely no necessity for it. They talk about pusher engines. The New York Central have two pusher engines at East Buffalo, and if there was any economy in putting a full crew on those engines they would not be handled, as they are to-day, by one man, and in each case a one-armed man, men who were crippled in the service and who need an easy job. They were put on there to protect that engine—flag in case of a stop on the main track. There is a one-armed man, and only one, on each of those engines. They have taken care of the business mighty well, and they like their jobs.

I want to speak of another case that came to my personal attention, at Collinwood, one of our large yards. This particular case happened some years ago, but they went into ancient history this morning, and so I will, just to that extent. I have seen men riding on the engine in the Collinwood yard (this was the man they referred to this morning as the one who followed the engine) sitting in the window of the cab of the engine, alongside of the engineer, telling him what the signals were down ahead.

Now, as to the qualification provided for in this act: It says that a man must have had a stated amount of experience to be a foreman, and that at least one of the helpers must have worked a stated length of time as a switchman. I do not just get the meaning of what they mean by "switchman," but I am afraid that what they would like to have the bill provide for would be just what it says—a switchman. That would mean that a man might work in the road service for ten years, and be ever so experienced, but that would not constitute experience in the service as a switchman, and he for that reason would not be qualified to act as a foreman or as a switchman. If that is what that means, it is absolutely unfair, and I do not know why it should be put in there, unless it is for the protection of an individual organization. I do not know about that point.

The ACTING CHAIRMAN. What are the usual qualifications of the foreman or conductor?

Mr BERNET. On our line, in the regular orderly method of handling our business, we take a man and put him on as a switch tender. Then we promote him to the position of yard brakeman, as his turn comes along. Then he is promoted to the position of yard conductor or foreman, and our foremen, as a general proposition, are old experienced men who come along in our service. It is our policy to make our own men—to educate them. We feel that we get better men that way. We do not hire, and we specially guard against the hiring of what is known as boomer switchmen. We do not want them. They work long enough to get a month's pay and then they are off, and you do not know where they are. We can not use that kind of men. We prefer to make our own.

I guess we all know about the recent unpleasantness up in the Northwest, up in Twin City. The railroads up there, I expect, hired a lot of men that had not had a year's experience, because they filled their yards up awfully quick, and that may have had some bearing on the introduction of this qualification in regard to experience.

Now, as to this question of other duties. I do not know what that refers to especially, unless it means that they must not be required to cut hose or throw switches. We sometimes require the conductors in outlying districts to make some clerical reports. Maybe that is what it refers to. And when a car has a drawbar pulled out, we ask the switchman to chain it up. Maybe that is what it refers to. But we think they ought to do those things. We feel that a switchman ought to do something for the money we pay him. Then, there is this question of going between the cars. I do not know what impression the committee got this morning, but I was afraid they might get the impression that it was necessary for the men to go between the cars to couple them. We have instructions out now, and have had for a long time, that absolutely forbid the men going between the cars to either assist in coupling or uncoupling them if the lever is inoperative. Our instructions further state that the men must stop the train and go around to the other side and use the lever on the other side. We have disciplined men for not doing it, and I will discipline men if I find that they are not doing it. We do not want men hurt in the service. We further have put out instructions, when anything happens that requires the application of the knuckle or the chaining of a car, that before a man goes between the cars one man must be sent to the engine and the engineman must be told what they are going to do so he will thoroughly understand the situation, so that there will be no question about his moving until they get ready. We have spelled those instructions out in detail so that there can not be any question about its being done.

I only speak of those things because I dislike to have the committee get the impression that we are not concerned about the safety of our men. We are.

I have not tried to figure out how much it would mean to our company if we were required to put another man on the engines that are now working with the conductor and one brakeman. There are not so very many of them, although in the aggregate it would run into considerable money. My contention, however, is that there is absolutely no necessity for it. The few engines that we are working shorthanded are such as I told you of at towns that have a limited amount of switching, and, occasionally, in a large yard, what is known as a trap engine, that does a little odd job here and there and never handles any big strings of cars. It does a little running around. It is a kind of an errand boy around the yard. To put another man on there will not get any more work out of it and it will not make it any safer.

There was one thing said here in criticism of the ambitious minor official. I think Mr. Harshbarger spoke about that. I know something about it, because I have been a minor official. I came up from the ranks. I am now putting out instructions to these so-called ambitious minor officials; and if they are ambitious, and think they are going to further their interests, it will be by carrying out my instructions and not by violating them. Any fair-minded man will recognize that situation. I only want to take exception to that statement because I think it was unfairly made. I do not think there is anything more I want to say, except that I do not just see the fairness of this law, if it is going to be effective, exempting logging locomotives or trolley lines. That, however, I am not interested

in one way or the other. I simply want to call attention to the fact that it does make that exception. That is all I have to say.

Mr. FAULKNER. Mr. Johnson, will you address the committee now, giving your full name, occupation, and the road you are connected with?

**STATEMENT OF MR. J. T. JOHNSON, GENERAL SUPERINTENDENT  
OF THE CENTRAL OF GEORGIA RAILWAY.**

Mr. JOHNSON. Mr. Chairman, I represent one of the roads down in the Southeast and we object to the bill H. R. 16879 for the reason that we think it is unjust to the railroad companies and unjust to a good many of the employees. It looks to us like class legislation, legislation in the interest of a certain class of employees and against others, and incidentally making it, if it should become a law, more expensive to the carriers and curtailing the employment of men from the road service in the yard service.

Section 2, in reference to yard engines (and I assume this bill only refers to yard service, as it was introduced, as I understand, by the Switchmen's Union, which has no members and no interest in the road service), requires one engineer, one fireman, one foreman, and two helpers.

So far as our road is concerned (and, I think, this applies to a majority of the roads in the Southeast), we invariably comply with that rule now, except at a few small outlying yards where the local freights are not able to do the work, and possibly at some passenger terminals where the switching is all done by the man in the tower through the interlocking switches, and where the men on the ground have nothing to do except to give signals to couple and uncouple the cars. But even so, it would work a hardship on the roads in this respect: The crews, as you all know, work ten, eleven, or twelve hours. The engine switch works twenty-four hours and they change crews twice a day. It frequently happens, especially on pay days and just after pay days, that all of the men do not show up at the time the engines have to start to work. Then it becomes necessary to send a messenger or call boy out to hunt up somebody else. Now, if this was the law we could not start an engine with two men, although we could do some work with it. We would have to let the engine stand still with the engineer and fireman and two men on it until we could run around and get up another man. That might take one, two, or three hours, or in some cases, in large yards where a large number of men sometimes fail to report, especially just after pay day, and during holidays, and circus days, and during bad weather, it would mean that we would possibly have to cut off two engines entirely in order to get enough switchmen to man the other engine so as to comply with this law.

While I am not an advocate of working switch engines with short help, at the same time in case of emergencies I do not think our hands ought to be tied. I think that the officers who are responsible for running railroads ought to be allowed to exercise some judgment and some discretion in the matter.

Now, in regard to paragraph 3—

Mr. ADAMSON. Before you leave that, I would like to ask you the same question that I asked the gentleman this morning on the other

side. That is, do the railroads generally discharge their duty in looking after these things, by making due arrangements, and taking due precautions in the matter of safety appliances, for the safety of their men; or are these instances sporadic and occasional? Tell us something about that.

Mr. JOHNSON. In answer to that, Mr. Chairman, after listening to the gentlemen's statements this morning, and from my thirty-one years' experience in railroading, altogether in the transportation service, having served as a brakeman, switchman, freight conductor, yard foreman, yardmaster, train master, superintendent, and now general superintendent, I must say that any reasonable man could see very plainly from the statements made that all of the cases which they cite are exceptional ones and do not refer to average conditions. In my opinion there is not a railroad company in this country that does not look first after the safe transportation of the passengers and freight entrusted to it, and then to the safety of its employees. The rules are plain on the subject, and there is a large quota of officers maintained just for the purpose of having the minor employees, whose duties are defined by these rules, carry the rules out.

Mr. ADAMSON. An unfortunate case was presented here this morning of a very worthy man who was maimed for life, and I hope the railroad paid him enough for it to have hired a thousand men. In that instance he was switched into a 40-car siding with a 50-car train. I want to know if such situations as that are common in your experience among the railroads?

Mr. JOHNSON. No, sir; they are very uncommon with us. I do not recall any such incident as that. Of course my experience has been mostly south of the Ohio River and east of the Mississippi, where the traffic is not as heavy as it is in the East or in the Northwest.

Now, in regard to section 3, which says it shall be unlawful for a carrier to employ any foreman who has not had at least one year's experience as a switchman, we do not comply with that clause literally now, although it is the general practice to promote the switchmen to foremen. At the same time if an emergency should arise where we did not have a switchman in a particular yard who was competent to be a foreman we believe we are safe and that it is good practice to take a man out of some other part of the service and put him in charge of that yard. The foreman has to be familiar with the rules and has to pass an examination, and after that is done I do not see what other qualifications should be required. We make foremen sometimes out of flagmen or brakemen. We have made them out of car inspectors, transfer clerks, and various other employees and have gotten excellent results. That refers more especially to small yards where we have only one or two engines.

The other part of that section reads:

And at least one of the helpers required by the second section of this Act shall have had at least one year's experience as a switchman.

We do not think that the State or the National Government should say to us how much experience a man should have to become qualified for a switchman, any more than it should say how much experience he should have to become a brakeman or a flagman on a train. So far as the safety of the public and of the employees is concerned, we believe that a flagman or a brakeman on the line of the road has a very responsible position. There are frequently times when they

are placed in a position in which thousands of dollars worth of property and numbers of lives would be jeopardized in case they should not carry out the rules. On the other hand, if we take a young man who has graduated from college and give him an apprenticeship on the road, and he serves ten days or two weeks in learning the road and learning the rules, and he comes up to the office and is examined on the rules and train signals and whistle signals, flagging rules, etc., and qualifies himself to go out on the road, we consider that we have as safe a man as we could reasonably get. We know from our experience that a majority of the accidents are caused by the men who have had long terms of service rather than by new men—that it is an exception and a rare occurrence that a new conductor gets into trouble or that a new brakeman gets into trouble. On the other hand, the worst accidents we have are caused by men who have been in the service a long time and who either forget or get careless, and disobey the rules. That is the cause of the trouble.

The same thing relates to switchmen. If we pick up a car inspector or a car greaser or a freight-house trucker, or anybody else in any other part of the service, and examine him and he passes a satisfactory examination as switchman, we do not see why we should put two or three or four or five men on the engine. We do not think we should be held down by a positive rule, you might say, as to manning these engines.

Now, in regard to section 4, I do not know exactly what is intended. That is a very broad section, and I suppose could be interpreted to read in a good many different ways. It says:

That neither the foreman nor the helpers mentioned in the second section of this act shall be required or permitted to perform any other duties in addition to their respective duties as foremen and helpers while the locomotive engine on which they are employed is actually engaged in the business of switching cars.

If we were to comply with that rule as it reads it would simply mean that those men could not be called upon to do anything except to couple and uncouple cars and give signals. In a yard where there is only one engine the foreman is required to take a record of seals, a record of the cars coming in and going out, and to look out for the doors and keep them closed. You could not require him to do any of those duties. In some of these small yards where we have no foreman we require the switchmen to uncouple the air hose. We could not make them do that. In case they pulled out a coupler or a knuckle broke while they were switching, you would have to stop, whether you blocked the main line or were into clear, until you got a car inspector or somebody else there to make the repairs. We think that is a very dangerous clause.

Now, I want to say one word about the risk that the switchmen have nowadays as compared with twenty or twenty-five years ago. All cars in interstate service are equipped with automatic couplers, and our rules—and I believe all the other railroad companies' rules—positively prohibit the switchmen or brakemen from going in between the cars to uncouple or couple.

We quote the rule in the application blank for service, and the men are required to sign that they understand that rule. Then in the examination we examine them on it, and ask them if they do understand it; and then in the ordinary handling of the business we frequently have to discipline them for disobeying it. Now, as to it



being necessary for switchmen to stand on the footboard of an engine in order to push the coupler one way or the other, in order to make a coupling, that is all moonshine. That does not occur three times in a hundred, because most of the coupling and uncoupling is made on straight lines. Nearly all of the large yards where any switching is done are built on a straight ladder, and after the tracks make one curve and go around the ladder they are on another straight line. The very difficulty of making couplings on curves prevents and keeps the railroads from building yards on curves.

Now, in probably over half of the industrial plants which are located here and there, and around corners and around streets and walls, and places like that, the tracks are on curves; but that is not strictly switching. That simply means that you take a cut of cars there and place them to load, and then you pull the loaded cars out. It is not like taking a 50-car train in a big break-up yard, where you probably have to uncouple 20 or 30 times in that train and switch cars out. It is altogether different. The switchman does not run the risk, and there is not the chance of accident on these outside places that there is in the large yards. So far as I am concerned, we discourage the men from riding on the footboards, and especially from getting on them when the engines are approaching. With the exception of minor accidents, which occur now and then by the men violating the rules in trying to uncouple the cars by lifting the lift lever by hand, or the lock pin by hand, instead of uncoupling by lifting the lift lever on the end of the car, the majority of the accidents which we have now occur by the men attempting to get up on the footboard of an engine approaching them, standing in the middle of the track instead of standing on the side and catching the engine as it comes by. The road locomotives which are equipped for pilots have no place on the pilot that a man can step on. We remove the steps and nearly all of the roads in the Southeast have removed them; and all the pilots on our road, and on a good many of the other roads, are stenciled "Keep off." The only step or place that is provided for a man to get on the road locomotives is a step that is nailed behind the bumper sill in front, and a step that is fastened to the rear end of the locomotive, which keeps him from between the rails. If we can keep them from between the rails, they do not get hurt.

I do not believe it is practicable, and I know it is not possible, so far as our road is concerned, to put a continuous 12-inch board on the front and back of an engine, for the reason that it would be impossible for that engine to couple up to another engine with a pilot, and in ordinary yard service it is necessary many times a day to have that work done.

So far as the statement is concerned about the roads turning off one switchman during dull business, I do not see how any transportation man figures any reduction by resorting to a practice of that kind. An average switch engine costs about \$16.60 a day in wages, plus the fuel and the wear and tear on the engine. It certainly would seem that when it becomes necessary to reduce expenses you would take off one engine rather than to take one man off of each one of ten engines or five engines, because we know that a switch engine does not earn any money at all, so far as transportation is concerned. All of them are operated at a dead loss, as we figure, in the transportation. Therefore the fewer such engines you

have the more economical your transportation is. For that reason, in the heavy yards, where we employ from three to five and six switchmen to an engine—I am not speaking of the hump yards now, because they go in the fifteen class and above—and where you have an ordinary grade, say, a seven-tenths grade that your cars are rolled out of, it is certainly more economical to keep enough men with that engine to keep it going than it would be to have two engines there, and to make them stop every time they have to uncouple or make a coupling.

I want to say one thing about the third man, so far as fog is concerned. We all know what difficulties the railroads have to encounter during fogs, and in heavy snowstorms, and in weather of that kind; but it certainly is easy enough for the committee to see that if the one foreman and the one switchman can not see more than 200 or 300 feet it would be of very little more service so far as seeing is concerned, if they had on a second switchman. In the country that I live in we have a great many fogs, especially in the late summer and early fall, and the only way we can avoid accidents is by running carefully, and by not taking any chances at all.

One of the gentlemen this morning spoke of his train having to be stopped by telephone, in a case where the rear cars were derailed. I suppose if that occurred in recent years he violated instructions in the first place by starting out of the yard without having his air coupled. The rules are now, in all transfer trains, that the air must be coupled from the engine through, and if the air brakes had been operative at the time he refers to he certainly would have stopped this train without using the telephone.

I do not know of anything else I can say. I could say a whole lot, too, but I do not want to take up any more of the committee's time.

Mr. FAULKNER. May I ask a question?

The ACTING CHAIRMAN. Yes.

Mr. FAULKNER. Just state clearly and succinctly to the committee the number of employees on the different switching engines, commencing with the employment of the lowest number, and going up to the highest, and why you make the difference in the number of men on the particular classes of engines.

Mr. JOHNSON. Well, at the present time, speaking for the Central Railroad, we have no engine in our service that has less than 1 foreman and 2 helpers. Those engines are working out where there is only 1 engine in the yard, and at a good many places where we only work 1 engine in the daytime. In the larger yards, where they are on grade, as the business demands, we increase the men from 3 to 6. I think 6 is the highest number we work with any engine at this time. We do that for the purpose of keeping the engine going. We all know that if you cut off a car on the ladder track, and it has to go down two or three hundred feet to clear it takes more men to handle it, where you are handling 50 cars, than it does where you are handling 5 or 6. That is the reason we increase the men. As far as the switching is concerned in the smaller yards, it is done just as well with 3 men as it is in the larger yards with 6 men.

Mr. FAULKNER. You have no engines that are run with less than the foreman and two helpers?

Mr. JOHNSON. Not now; no, sir.

Mr. FAULKNER. But you spoke of the necessity in some emergency of using less as a reason why you did not want statutory legislation.

Mr. JOHNSON. That is it; yes, sir.

Mr. FAULKNER. Mr. Payne will now speak in reference to the bill H. R. 16880.

**STATEMENT OF MR. S. R. PAYNE, GENERAL SUPERINTENDENT  
OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD.**

Mr. PAYNE. Mr. Chairman, I want to say a few words in connection with the bill H. R. 16880, which provides for equipping all locomotives regularly engaged in switching service with footboards and headlights. The bill in itself would seem to be intended to take care of emergencies only. The general practice on all railroads in purchasing and assigning power is to assign a certain percentage of the power and have it designed for the purpose of switching cars.

Another class of power is intended for freight service, and still another for passenger service. I do not think any railroad could justly claim that it would be of advantage—in fact, it would be a disadvantage—to ever assign other than a switch engine to switching service. The switch engine is designed first with a view to permitting as much room as possible for the engineer and fireman, and next, with the purpose of permitting as much of a view in either direction for the engineer and fireman as possible. To accomplish this the size of the boiler is restricted, the wheels are made lower, of smaller dimensions, the tank is built on a principle that is generally known as the slope tank, so as to enable the engineman to see to the rear. With all these favorable conditions, with the short haul, which is usually expected, or the short distance that the power has to be exerted, the engine is built to do its work and to afford these particular advantages.

On the New York Central and Hudson River Railroad to-day I am safe in saying there is not a locomotive in the switching service that is not equipped with front and back headlights and steps, and we have an agreement and an understanding with our men that road engines will only be assigned to that work for a limited length of time. I believe, without referring to the agreement, it ranges from five days down to forty-eight hours, or something of that kind. So that what the organization intends doing by introducing this bill and having it passed is to bring about a little more than they have already been able to accomplish in conferences with the general officers. The passage of this bill would place the railroads in the position of not being able to temporarily relieve congested conditions in yards or at manufacturing concerns or industries for a given period below what the agreement already calls for, by assigning a road engine or a freight engine to switching service.

During the past winter in New York State we had the most severe weather conditions that we have been confronted with for the past eight or ten years, and with it all we had a very heavy freight business; and in order to keep our freight moving and to give the service required and to serve the industries, there might have been, and undoubtedly were, times when we used a limited number of road engines in switching service. In assigning those engines we did it with the full understanding that the engine could not do the amount

of work that could have been done had we had the regular standard switch engine available for the service; but when you consider that, in order to protect the industries and to move the freight properly for the period of possibly a week or ten days during the month of January or February, when the yard conditions become crowded and cramped and the operation is difficult, our railroad or any other railroad would be required to invest anywhere from fourteen to sixteen thousand dollars in a machine especially equipped and fitted for that purpose and have it idle for fifty weeks out of fifty-two, you can readily see that we would be entailing a very heavy expense.

While it may be claimed that where the necessity for using a road engine in yard service is found necessary the pilot could be removed and steps could be attached, and the headlight could be placed on the tank, the conditions are not always right for getting that engine into the shop. When your yard is congested your shop is congested; and when all of your engines are in service and are being worked to their full capacity your stock of headlights may all be in service; your stock of material for attaching steps may be also in service, and in many instances the very engine that makes up the train, or that assists in the yard this afternoon, if you please, will be called upon and required to take a train out of the yard and to make a run of 100 or 150 miles as soon as the men that are on the engine are relieved and go home and turn the engine into the house. So that really the bill itself is only, as I understand it, intended to cover extreme emergencies, so far as concerns preventing the railroads from using in the switching service an engine not equipped with front and back headlights and with front and back steps.

I want to say one word with regard to the limitations of height, length, and the width of the step. On the New York Central the measurements and specifications are standardized, and in order to comply with this law, as I recall it now, we would have to change our standards somewhat. Since our standards have been established our company have electrified something over 300 miles of railroad. In other words, they have provided a third-rail service from New York to Croton, from New York to White Plains, and from Utica to Syracuse, and in other territories the third rail has been provided. The clearance of the third rail and the clearance of the equipment has been standardized, and before any action is taken in connection with this act it would seem that we should be given an opportunity to see just what effect this requirement would have on the millions of dollars of expenditures that have been made in establishing the electric service, because steam switch engines are employed in a large portion of the territory that has already been electrified.

THE ACTING CHAIRMAN. The measurements that are given here are dissimilar, are they, from the standards adopted by the New York Central?

MR. PAYNE. I can not say, but I will make the statement that I believe they would conflict with the clearances that have been established. I believe the clearance from the rail is lower, and I know that the condition that requires the board to be as wide as the widest part of the engine would bring it in contact with the third-rail hood or protection. We have a motive-power man here who will follow me in connection with this particular bill, who, I believe, will state that the dimensions do not conform with any established standard.

I do not know that there is anything more to be said in connection with this.

Mr. FAULKNER. How would that bill affect the switching of the regular local trains?

Mr. PAYNE. As I understand it, we are very considerate of our yard employees in making the concession that we have already made, that engines will be used in yards only a limited length of time without headlights and footboards, because local trains pick up freights, and the switching crews doing work at different stations out along the road do their work with engines that are not equipped with this equipment and work for hours and hours at a time, and under all conditions that are confronted in yard service, and from the fact that these engines have to make runs between stations and run over highway crossings and through farming country, where they are liable to encounter live stock, they are all equipped with pilots and they are not equipped with footboards and they are not equipped with back-up headlights. In fact, it would be difficult to put a back-up headlight on our ordinary freight engine where it would be of any great assistance to the switchmen. He is down so low when the light of the headlight would be of any benefit to him that the ray of light is entirely over his head, and the switching engines are constructed so that the headlight is down low, where the light from the headlight will give him assistance.

I may be drawing my conclusions too narrowly on the word "regularly." We contend—that is, I do, and I have talked with the representatives of the other railroads here to-day—that, literally speaking, our present practice would not be an infringement on this law, taking the word "regularly" in a broad and reasonable sense and applying it to an engine employed for a month or six months or a year; and I can only conceive of one condition under which any railroad would be liable under this law, and that might be the case of a railroad that only had one or two or three engines and could not regulate their power or classify it so as to cover all branches of the service that might be required of them.

I do not know that I have anything further to say in connection with this bill; and the other bills have been thoroughly covered. I might make mention of one statement that was made here to-day in connection with the full-crew bill, wherein one of the speakers referred to the Jersey Shore yard, on the New York Central. I am general superintendent of the New York Central and I wish to state that we have no yard at Jersey Shore.

The ACTING CHAIRMAN. Jersey Shore is on the Reading System, is it not?

Mr. PAYNE. Jersey Shore Station is on the New York Central. I was there twice last week, and up to that time there was not any yard at Jersey Shore. We have a yard in that vicinity called Avis yard. The station is Avis, and it has no connection whatever with Jersey Shore. The post-office is Vilas. We have a caboose engine employed at that yard, and the conditions are identically the same as at Buffalo, where we have caboose engines for pusher engines. The national officers of the Switchmen's Union know that on those engines we have one-armed men. We pay them as much as we would have to pay two-armed men; and if the work was of such a character as to require two-armed men, we would not have one-armed

men on those engines. I do not know that I care to take up any more of your time. I thank you for your attention.

Mr. FAULKNER. Mr. Seley will now address you.

### STATEMENT OF MR. C. A. SELEY, MECHANICAL ENGINEER OF THE ROCK ISLAND RAILWAY.

Mr. SELEY. Mr. Chairman, I would like to speak on the dimensions and location of the footboard that is referred to in the end of the first section of this bill. It says:

The footboards herein required shall extend across the entire width of the engine; they shall not be less than twelve inches in width, and shall be securely fastened at a height of ten inches from the tops of the rails.

A question has been raised with reference to the clearance dimensions. Aside from the question of electrification, which is not general, there are on most all railroads restrictions in width, at the height of the top of the rail or for perhaps a foot above that point, with regard to bridge construction, station platforms, and various matters of that kind, which limit the clearance at the lower corner of what we might call a clearance diagram, which would embrace all of the safe limits through which railroad equipment can be operated on the railroads; and to my mind the "entire width of the engine" that is stated here is rather indefinite. The maximum width of a locomotive is generally at the running board, or it may be over the cylinders or some other portions of the engine, which are generally higher than the location of the footboard. We can hardly see the necessity for extending a footboard out to correspond with that extreme width, even for the purpose of using it as a step, as a somewhat less width than that would give a very convenient and reasonable footing for switchmen to use.

It has also been stated by a former speaker that there should be a clearance for the pilot of an opposing engine being coupled to a switch engine with a footboard, and I believe that this is an entirely reasonable requirement, as the portion of the footboard under the coupler can not be used by the feet of the switchmen, and to make a switch engine coupler extend out so far as to couple with the coupler of an engine with the average pilot would make the switch engine coupler a rather frail construction. We prefer to shorten that down for strength to about the average that is used on locomotives at the present time, rather than to modify it in the direction of making a frailer construction.

There has been a tendency of late years to reduce the extreme length of pilots on road and passenger engines, due to the better protection of the right of way; but at the same time we can not do away with the pilots very well, and the majority of engines have pilots which would interfere with footboards which are 12 inches in width and extend clear across the engine without a recess for the pilot. I think the most serious feature of this is the exact definition of "10 inches from the tops of the rails." The safety-appliance law provides a 3-inch variation in the height of couplers on cars—from  $34\frac{1}{2}$  inches to  $31\frac{1}{2}$  inches—and couplers within those limits are recognized to be within the standard heights. A switch engine, or any locomotive for that matter, while it may be put out new with its couplers at the standard height, will go down to some extent

by its work on the road bringing the springs into action, the wear on the tires, and all that sort of thing, and there is also the possibility of a measurement being made on tracks which are not exactly level, so that, although a line projected from under the drivers might measure exactly 10 inches under the step, the rail actually under the step might be more or less than that amount. A railroad man, of course, in reading a figure of this kind, always couples it in his mind with "more or less," but that is not what the law says. The law says 10 inches, and, strictly speaking, a sixteenth of an inch more or less than 10 inches would be a violation of the law. We believe, therefore, that that should be qualified by the variation which is allowed now in the height of car couplers. It should also be qualified in regard to the length, so that it will give a reasonable footing for the switchman without interfering with things which are in the permanent way of a railroad, and which are included within the ordinary clearance-diagram information.

I believe that is all I have to offer.

MR. FAULKNER. Mr. Reynolds will now address the committee on the bill H. R. 16881.

#### STATEMENT OF MR. H. J. REYNOLDS, GENERAL YARDMASTER OF THE NEW HAVEN RAILROAD.

MR. REYNOLDS. I wish to speak, Mr. Chairman, on the bill H. R. 16881, regarding obstructions in yards. I can state for our own yards, on the consolidated system, that it is the practice always to clean those yards every morning, and not to leave any obstructions lying around. As far as drawbars or anything like that are concerned, we require the crews to take them off the minute they pull them out. If they have no car that they can put them in, they are required to take them and place them away where they will not be a source of danger to switchmen in the yards.

MR. ADAMSON. Have there ever been any local state laws requiring that, or is it merely a rule of the railroad company?

MR. REYNOLDS. It is a rule of the railroad company. We require that of the men, sir. As far as coal and similar obstructions are concerned, we can not very well take them off the right of way when they fall off, but in the morning we have the section men in the course of their work, in looking over the tracks and everything, clean up the coal and any obstructions such as brake shoes, etc. They take them off and clear the tracks.

MR. RICHARDSON. Do you know of anybody coming under your observation that has ever been injured by any of those obstructions?

MR. REYNOLDS. I do not; no, sir.

MR. RICHARDSON. Have you ever had any complaint made to you about them?

MR. REYNOLDS. No, sir; I have not.

MR. RICHARDSON. Who is inspiring all this?

MR. REYNOLDS. I can not say.

MR. RICHARDSON. You do not know who stimulates it?

MR. REYNOLDS. No, sir.

MR. KNOWLAND. If the judge had been here this morning he would have heard the gentlemen on the other side.

Mr. FAULKNER. It is the switchmen's union.

Mr. REYNOLDS. As far as interlocking is concerned, that seems almost impracticable, because in cold, bad weather the switches would freeze up. In bad weather you would simply be frozen up entirely. You could not move your switches, if they were to be put underground.

Mr. FAULKNER. How would you do about the lamps?

Mr. REYNOLDS. The lamps? I do not know what they would do if they had to move those switch stands. There would be no place there for them.

Mr. FAULKNER. Could you put them underground?

Mr. REYNOLDS. Not very well. There would be no place to put your switch lights or anything to guide the men when they are coming into the yards, you know.

Mr. RICHARDSON. Do you mean those lights that we see up and down the railroad?

Mr. REYNOLDS. Yes, sir. They indicate the way the switch is set.

Mr. RICHARDSON. You could not put them underground. They would not be of any service there, would they?

Mr. REYNOLDS. No. We have them on switch stands to indicate the route for the cars on the ladder tracks, or on the leads.

Mr. FAULKNER. Does not this bill contemplate putting them out of the way?

Mr. REYNOLDS. This bill would put them away and you could not see them at all. No switch stand would be allowed there.

Mr. RICHARDSON. Which bill is that?

Mr. REYNOLDS. H. R. 16881. You could not see them at all. In fact, the switch stands would not be there.

Mr. RICHARDSON. You have always been in the habit of providing those lights, have you not, in your yard?

Mr. REYNOLDS. Yes, sir.

Mr. KNOWLAND. There is no other method of telling which way the switch is set, is there?

Mr. REYNOLDS. No, sir; not at night. There is no other way at all.

Mr. ADAMSON. There was some testimony here this morning about the trains being so long and the tracks being so crooked that you never could see from one part to another. Do you not think that you ought to either shorten the trains or straighten the rails, or put a system of telegraphy on the trains so that you could communicate from one end to the other?

Mr. REYNOLDS. I do not know that all yards are so crooked as that. I have never seen them that way. If a man goes in on a 40-car track, and he has 50 cars, that is up to some employee, who is making that mistake, if he can not get around them. If he knows he has fifty—

Mr. ADAMSON. That is not a fair way to treat the engineer, though, to run him into a siding that is too short for his train.

Mr. REYNOLDS. No. Well, I do not know that the engineer would be in much danger if there were no cars on the track. He would have a clear track.

Mr. ADAMSON. If he could not see the other end of the train, and he had no helpers and had to get down and go back and break the train up himself, he would be in a bad fix, would he not?



Mr. REYNOLDS. He would be; but I think there is sufficient help on the train to help him out of that.

The ACTING CHAIRMAN. Is there anything further to be said upon the measure?

Mr. FAULKNER. I will ask Mr. Thompson to say a few words.

**STATEMENT OF MR. A. W. THOMPSON, CHIEF ENGINEER OF THE BALTIMORE AND OHIO SOUTHWESTERN RAILROAD.**

Mr. THOMPSON. Mr. Chairman, it seems to me that if very much more were said about this bill, if you will permit me to make the statement, it would look ridiculous.

Mr. RICHARDSON. Which bill is that?

Mr. THOMPSON. H. R. 16881, the House bill referring to obstructions in yards. The probable underlying thought was to compel the railroads to keep their yards reasonably clean of obstructions lying about. The bill does not, however, state that. In fact, it is so wide of that that it is inconceivable that anyone at all familiar with railroading could draw up any such bill. It has been pretty well covered by the gentlemen who have previously spoken. However, there are a few points that I would like to bring out. The bill speaks in line 7, on the first page, of obstructions remaining between the tracks or between the rails. Farther down, in line 11, it refers to the term "obstruction" meaning "any article or substance which is liable to impede the free passage of employees."

That might mean anything above the path or above the ties on which the employee walks. That would include the guard rail, the guard-rail clamps, locking arms to switches, interlocking rods, switch lamps, and switch stands. If this bill were passed, and the railroads attempted to follow it out, they would have to remove the switch stands. In fact, as the bill stands, as printed, it is utterly impossible for a railroad to comply with it, and it would only mean a series of fines, etc., until the bill was annulled or changed in some way.

After listening to these gentlemen who are in favor of the bill I take it the railroads are going backwards rather than making any progress in arranging their yards so as to make it easy of access for employees in carrying out their duties. The tendency of all railroads to-day is to keep their yards free from obstructions, if for no other reason than from a selfish standpoint, to get more work out of the men and more and better switching done. The railroads in the past five years have made great progress in the construction of yards. I have had to do with the designing of yards and interlocking plants for twelve years. I must say that every intelligent means to make the yards as free as possible has been used. Yards recently designed, I think these gentlemen will bear me out, have been very free from obstruction, as compared with the old yards. The new yards, called gravity yards, from which the cars drop down from an elevation into their classification tracks, have been so arranged that it is hardly necessary for the switchmen, or car riders, as we call them, to be on the ground at all. The cars are cut off at a high bump, called the hump or knuckle in the yard, and dropped down by gravity into the classification tracks. All that is necessary for the switchman to do is to ride down on the cars, and put the brakes on to stop them before they strike other cars in the yard and do damage.

In many yards the men are hauled back on a locomotive or narrow-gauge track car, which is provided for the purpose of getting the men back to the hump.

Coal and coke dropping from a car is often occasioned by the negligence of the employees in not doing their duty in stopping the car before it hits cars on the tracks on which the car is running. In the large yards to-day the railroads have yard gangs who do nothing else but clean up the tracks. I do not know of a large railroad in the country that has not this established. So much for cleaning up such things as coal, etc.

Now, take drawbars. Drawbars are frequently pulled out through the negligence of the employees. We have had committees wait upon us in the past year, and I do not doubt that these gentlemen have taken the matter up with the railroads, requesting and almost demanding that they be not requested to move a drawbar when it has been pulled out. I understand, although I have not seen the bill, that there is a bill here now that will prevent the railroads from requiring the men to do any such work.

In regard to interlocking rods, switch stands, etc., I do not know of any way that we could design our yards, or design any appliance for handling switches, that could be put entirely below ground. The interlocking plants are usually established at each end of the yard, except the plant at the hump in the yard, which is usually operated by electricity. The switches at such a point are moved by motors at the switching point. These motors are always covered with some kind of jacket, and are not particularly in the way of anyone having work to do in the yard—certainly not in hump yards. The interlocking plants established at each end of the yard have been established mainly to prevent accidents from the carelessness of the employees in coming out on to the main track, in the way of a train of a superior class. I do not know of any possible way to so arrange the interlocking rods that they would be entirely below ground and still perform the duties we require of them. All of the railroads that I know anything about (and I am on a number of committees of the American Railway Association in the maintenance-of-way work) cover the interlocking rods about towers, so that they will not interfere with the crews when they go to the towers to get their orders. I believe that diligent care is being taken to prevent accidents to employees by arranging the rods in the best possible manner.

It seems to me that this bill admits of such wide interpretation, and is so sweeping, that it would work very great hardship on the railroads if any attempt was made to carry out such a law.

The term "obstruction" is a very unusual one; it is so very sweeping. Further, in section 3, line 9, page 2, it clearly states "any carrier, person, firm, or corporation subject to this act permitting any obstruction to remain in yards or terminals."

Let us assume that the interlocking rods, switch stands, etc., do not enter into this, and just take the matter of coal, coke, or drawbars. That one article is so vicious that I do not know what the railroads would do if they tried to carry out and live up to this law if it be passed. Brakemen in climbing over cars of coal, when they find coal in the way, deliberately kick it off. I think these gentlemen will agree with me that they have been on trains and have seen the brakemen do that. For the railroads to be responsible

for injury after such an act as that seems manifestly unfair. I am sure that all of the railroads gladly cooperate with the employees in keeping the yards reasonably clean; but this bill does not state that in the printed bill. I think that even to a layman the inconsistency of this bill and the hardship it would work on a railroad is so evident that it seems hardly necessary to take further time. I thank you for your attention.

Mr. FAULKNER. In reference to repairing the tracks in the yard, how could you repair the tracks?

Mr. THOMPSON. A gentleman this morning, I believe, remarked that ties were left lying in the yards. A track has to be renewed approximately every eight years. The rails and ties wear out. To renew them ties have to be carried into the yard and placed between the tracks. Then the tracks have to be cleared off and the ties put in the track. The old ties have to be taken out. I admit that there may be times when ties are taken up and left for what seems a little longer time than is absolutely necessary. I think, however, that every railroad superintendent—and I have been a railroad superintendent for four years—would be very willing to clean up those conditions. It is to the advantage of the railroad company to do so. When a rail is renewed in the yard tracks or in the main tracks along the yards, the old rail has to come out. It is usually thrown over into the space between the tracks, where it is uncoupled and then loaded. There has to be a certain interval of time between the time of taking out the rail and taking the angle bars off and loading it that this bill does not provide for.

Mr. ADAMSON. Do you know of any state laws or regulations on the subject contemplated in any of these bills?

Mr. THOMPSON. No, sir; I do not—except that possibly Ohio may have a law relative to the minimum number of men to be carried on the crew. I will not attempt to say about that.

Mr. ADAMSON. You do not know of any on the subject of keeping the yards clear?

Mr. THOMPSON. No; I know of none of that kind.

Mr. FAULKNER. That Ohio law relates to the road service, does it not?

Mr. THOMPSON. Yes; the road service. As to obstructions in yards, I know of no State (and our lines run from New York to St. Louis and Chicago) that requires any railroad to keep its yards clear.

Mr. ADAMSON. You know, there was an old Greek philosopher some three thousand years ago who said that a man who studied the stars and kept his head in the skies might step in a ditch and break his neck. They had not invented the United States Congress then. If they had, it would have fixed that.

Mr. THOMPSON. That man was an astronomer. Those men are not on the railroads now. They are buying land.

Mr. FAULKNER. We have one other gentleman, Mr. Patterson, of Atlanta, Ga.

**STATEMENT OF MR. JOHN D. PATTERSON, SUPERINTENDENT  
OF TERMINALS, ATLANTA, GA.**

Mr. PATTERSON. Mr. Chairman, I would just like to make a few remarks on the clean-yard bill. I think all the railroads do what they think best to protect their employees. I have a yard covering about 21 miles, and I handle 14 yard engines. I have a man who goes from one end of the yard to the other and makes 4 trips a day, to take up the coal and stone and scrap iron. I also have a bulletin there, stating that I will discharge any man who leaves a drawhead, brake beam, brake rod, brake shoe, or a car door in the yard. If a man lets one fall off he has got to pick it up. If he pulls out a drawhead he has got to pick it up. I hold him responsible for it. I have had charge of the terminal going on three years, and I have not had a single man hurt from the leaving of any obstruction in the yard. I put in the yard last year about 4,800 ties. We haul in of a morning just what ties we can put in that day, and at night we take them away. It is just as the gentleman there, the yardmaster, said about the obstructions in the yards. The crews are largely to blame for it—nine times out of ten. When they ride a cut of cars down, they let it hit too hard, and sometimes it knocks into a car that is loaded with lumber and knocks some off. If it is loaded with coal it very often knocks the coal out. They are not as cautious as they should be.

Mr. KNOWLAND. How about the signal rods and switch rods? Are they out of sight?

Mr. PATTERSON. No, sir; I equipped that yard, and I spent \$580, I think it was, in buying lamps to put above ground to protect the switchmen. That is a protection for them. I use red and white on the main line, and green and white on the inside, and they can tell the position of the switch. That saves them coming up to see. If they did not have the light there they could not tell anything about it. If they did not have that every time they came to a switch in the yard they would have to come to it to see whether they were right or wrong.

Mr. KNOWLAND. It is of more advantage to have it there than not to have it there, even if they do stumble over it?

Mr. PATTERSON. Yes, sir; but they do not stumble over it. Now, about men going between cars to cut them. They have a lever by which they can cut the cars from outside. If they can not cut it from outside they can not get up and ride the brake bar and lift the lock-pin with the finger. If they can not raise it with the lever, where they have fifty times more power than with the hand on the lock pin, they can not cut it.

Switchmen have a very odd quality. They get into the habit of setting the drawhead up. I have seen a fellow get up right on the brake bar and move the drawhead back two or three times. That is a habit with them. They get the cars that close together [indicating] and grab the grab iron and take their foot and kick the drawhead. I had a fellow cut his foot half in two. It is a habit with them. It is a habit with them going between cars.

I think all the railroads expect to be regulated, and are glad to have this proposition come up. It gives them a chance to show their side of it. But the railroads want to do all they can for their employees.

I tell my men, "It is bad enough to tear up the company's cars, but for God's sake do not hurt any men." We try to take care of them. I do not know of anything else.

The ACTING CHAIRMAN. Are the conditions in your yard unusual, or is there such an order as you have among the yards generally?

Mr. PATTERSON. Well, I have a good yard, and I have a clean yard. I handled through there in April 47,582 cars, with 14 engines.

Mr. ADAMSON. Maybe there is more in the man than there is in the—

Mr. PATTERSON. I do not know about that. I am only one man.

Mr. ADAMSON. According to the testimony here we ought to have more men like you scattered around over the country in the other yards.

Mr. PATTERSON. No; I am only one.

Mr. ADAMSON. Have you any local law there on the subject, or is that merely a railroad regulation that you enforce there?

Mr. PATTERSON. That is a railroad regulation, sir. There is no law. Now, about the full-crew bill, I would just like to mention that I ran a local train a long time, and I ran a through train, and I ran a passenger train. I have 1 engine that I work 5 men on—4 switchmen and a foreman—that is, day and night. I have 2 other engines that I work 4 on—3 switchmen and a foreman. The balance are manned by a foreman and 2 men. But it is just as Mr. Johnson says: On pay day these men will get sick quicker than any people in the world, and very often we have to work short, because the men do not show up. The pay-day fever gets them.

Mr. ADAMSON. If you had prohibition, perhaps they would not get sick the day after.

Mr. PATTERSON. That would not have very much effect on them. They will get sick anyhow. But they come back pretty regularly. This bill says that you can not work a man unless he has had a year's experience. I am pretty sure that some of the men on the B. R. & T. have only had three months' experience in the yards.

Mr. ADAMSON. Why do you limit your testimony to your experience in your one yard in Atlanta? You have had railroad experience almost from the Atlantic to the Mississippi River. Why do you not tell the committee what your experience has been? You know a great deal more than you tell.

Mr. PATTERSON. I did not want to take up the time of the committee; and these other gentlemen have talked to you enough. I did not expect to say anything.

Mr. ADAMSON. We would like to know, Captain, whether these complaints are matters that are of general occurrence, or whether they are just occasional and exceptional?

Mr. PATTERSON. If they are of general occurrence I do not know it, sir; and I have railroaded from Charlotte, N. C., to Greenville, Miss. I have done everything on a railroad that any other man has done, except to own one, and my experience has been varied. I have worked on the track; I have fired and run an engine; I have run a train; I have been train master; I have been superintendent. So far as I know, and so far as my observation has gone, the conditions in the South are good. I was with the old Southern road, and was handed down from one corporation to another for thirty-four years, and I know they always tried to take care of their men. It is to their

interest to take care of their men. They give them all the protection they can. When I first began railroading, if a man had a head-on collision, he was ruined; he was disgraced. I know a man that had one three months ago, and he has not ever stopped yet.

Mr. ADAMSON. He does not have any distinction now until he does have one or two, does he? [Laughter.]

Mr. PATTERSON. No, sir; the conditions are good all over the South, I think. I do not see where any complaint should be made.

I thank you for listening to me, gentlemen.

Mr. ADAMSON. You just blame it on the telegraph operator now, and let it go?

Mr. PATTERSON. No; we blame it on the telephone.

Mr. FAULKNER. Gentlemen, that is all we have here. I suppose we can go now.

The ACTING CHAIRMAN. The committee, then, will stand adjourned. (The committee thereupon adjourned.)

THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Wednesday, May 18, 1910.*

The committee this day met, Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. You may proceed, Mr. Hawley.

**STATEMENT OF MR. FRANK E. HAWLEY, PRESIDENT INTERNATIONAL SWITCHMEN'S UNION OF NORTH AMERICA, BUFFALO, N. Y.**

Mr. HAWLEY. Mr. Chairman, as a matter of convenience, I believe we can arrange with the gentlemen on the other side to consider these three bills together instead of having a separate hearing for each one.

The CHAIRMAN. You do not have to have a separate hearing, you can proceed and discuss all three of the bills—the entire subject.

Mr. HAWLEY. Very well.

Our contention in support of bill H. R. 16879 is, first, that there is not a sufficient number of men employed upon each engine handling interstate commerce. It is a well-known fact that the switching service is considered extra hazardous and is so classed by insurance associations, simply because of the dangerous duties incumbent upon those following such occupation. It is unnecessary to explain in detail the dangers, but the great mortality is evidence of the truth of my statement. There is a line of safety extending from the man who runs the switching engine to what we term the man who works in the field. If that line is broken the man in the field is in danger owing to the peculiar construction of yards, and they can not be constructed and laid out in any other manner. There must be what are known as reverse curves, and when two men are employed on those engines the field man does his work very largely by chance or guesswork. In addition to that, it is an expensive operation to the carriers, because frequently such chance or guesswork results in the destruction of property by virtue of the fact that in pushing cars onto a track, with no man in view to give a proper sign of caution, the engineer pushes them against cars standing on the track, which results in the breaking of drawbars or the demolishing of cars. There are several other reasons, but that is the chief one. Technically, one man is termed

the foreman and the other two the helpers. The foreman endeavors to stand in a position where he can see the engineer and likewise the next man to him. That man endeavors to see the foreman and the field man, thus forming a chain.

The CHAIRMAN. What do you mean by the field man?

Mr. HAWLEY. The man who couples and uncouples the cars. If there are five, three, or two tracks in the yard and the first track is filled with cars to the clearance post, because of this curve it is impossible to see the man down in behind. I have a drawing here of the Washington terminal which will explain it in detail [exhibiting]. The foreman stands in a position where he tries to see the engineer, but when the field man is behind those cars he must guess entirely as to his position. If the third man were employed he could stand at the end of the track and thus see the man in the field endeavoring to couple or uncouple, also the man next to him, and in turn could see the foreman. In pushing cars there is the same situation. If there is but one man on the head of the train he at times must climb up and down, according to the switch, and if it is on a grade he must run, because if the train is stopped it is possible that the engineer can not start it again. If, then, that man can not throw the switch, the man next to the engine must see him in time to give a signal to the engineer, and the man in climbing down may fall. If there was a man in the middle he could watch the man and also see the one next to the engine and thus prevent a serious accident. I have a witness here to show you. If the third man was on the engine it is likely that accidents would not occur.

With your permission, I will endeavor to say in support of the second bill, aiming, as it does, to equip switching engines with footboards, if the present automatic couplers would align themselves automatically I would be in favor of abolishing the end footboards, because at best they are exceedingly dangerous.

The CHAIRMAN. What is that statement?

Mr. HAWLEY. If the automatic couplers would align themselves automatically I would be in favor of abolishing the end footboards, but up to the present time we have not had sufficient ingenuity to invent a coupler that will couple on a curve when it is uncoupled on a straight line, and conversely, when coupled on a straight line, it will not uncouple on a curve. A switchman must be there to push or pull the drawbar. He can not do that standing on the ground with any safety or any expediency, and therefore he must stand upon the footboard provided for that purpose. Frequently the carriers use road engines that are provided with pilots. Having nothing but a board on which the switchman must stand, there is considerable lateral motion on the drawbars attached to the engine, and, of course, he must get on the footboard as the engine approaches him. He can not do that with a pilot, because it is in the form of a V, but he can do it with the footboard of a switching engine.

Frequently we find that where a man undertakes to step on, his foot slips, and of course that is all—meaning the end of him. Even when on the pilot he can not work with the same degree of care or protection as when standing on a footboard, for he has a better purchase for his feet, and therefore is in a greater degree safe. Now, the road engines are not equipped with footboards on the rear of the tanks, simply on the corners, but the switch engines are, and in using the

rear of the train to couple there is no provision made for the switchman to stand. He must run on the ground, and as soon as the engine strikes the car by impact it pushes forward, and of course the man must keep running with it, while if he is standing on the footboard he does not, and he is removed from the danger of being thrown. Now, when the switching engines are equipped with footboards and they are of uniform height many of the dangers incumbent on the occupation at this time will be obviated. We have found several lines where the front and the rear footboards were not of the same height. Our desire is to establish a height of 10 inches from the rail. We frequently find them as high as 12 and 14 inches in front and less behind, and in a great many cases they do not extend the entire width of the engine or tank. It is said by the other side that that is necessary, because frequently a pilot or an engine with a pilot is coupled on. From a complete study of the construction of the engines I am satisfied that a footboard could be extended across the track without any danger whatever resulting in breaking the board or injuring the pilot. I believe that proportionately there are more accidents occurring from switchmen working from engines with pilots in yards than with those equipped with footboards, because no matter how careful a switchman may be he must meet with these resultant dangers.

The CHAIRMAN. Mr. Hawley, you have been so busy that I do not know whether you have had an opportunity to examine carefully the law that we recently enacted in reference to the uniformity of certain safety devices?

Mr. HAWLEY. That is to be left to the judgment of the Interstate Commerce Commission, is it not?

The CHAIRMAN. I have been under the impression that possibly that uniformity act would at least permit the Interstate Commerce Commission to require uniformity in all footboards?

Mr. HAWLEY. I agree with you. I have a copy of the law and have read it, but I do not recall whether it is mandatory on the part of the companies to use footboards at all times. By mutual agreement in many cases it is provided that an engine with a pilot shall only be used at specified times, but the minor ambitious officials take advantage of the phraseology used in the agreement and use one engine continually. Of course the gentlemen who occupy prominent positions with the carriers do not approve of such methods. I am free to say, without flattery, that I think they are too honest to permit anything of the kind, but that frequently occurs. If we had a fixed law of this kind, there could not be any evasion by any minor official who is ambitious.

Now, as to the obstructions between the tracks, speaking from a disinterested viewpoint, one would think that where men must travel constantly in filling such a dangerous position as switchman there should be no obstructions if they could be removed, but in our case the term "obstruction" implies not only discarded property, brake shoes, drawbars, and pieces of timber, but pipes and other parts of the block system or interlocking system which are frequently elevated above the ground when at least they could have been placed sufficiently low to make the path of the switchman level. In addition to that, in the winter time, when the water is dropping from the cylinder cocks and freezing, it forms an accumulation immediately in the path where the switchman must travel along the outside. We



have not any automatic couplers that will uncouple automatically by simply lifting the lever to let the cars run. The switchman must run with the cars and hold the lever up, and while I know the carriers have a rule that provides for punishment in case a man goes between the cars to uncouple them, it has to be done by virtue of the necessity that trains have to be made up in a little time and the men actually in charge make them usually economize that time. Hence, I say, the necessity of their going between the cars, and a man must run along on this path where we find discarded drawbars, discarded brake shoes and other pieces of broken property and parts of the interlocking system, such as pipes and chains, that may perhaps cause him to stumble, and of course if he stumbles, it means his death unless he is fortunate enough to fall outside, but he has no time to study which way to fall.

If the path between the tracks where the switchmen have to walk were free from those obstructions, there would be less accidents and less mortality. Mark you, it is not always that the switchman can work on a smooth path, for frequently he must work where he has to run over frogs and rails, and, of course, he is liable to put his foot in the frog, but that can not be prevented by any conditions attached to this bill; yet in the other case, where he does have to run in among the switches the path could be made smooth and the unnecessary discarded property could be removed. I do not think it would be a matter of great expense to the carriers. That is about all I can say on this matter now, Mr. Chairman.

The CHAIRMAN. Now, in reference to that matter, the bill provides that it shall be unlawful to permit obstructions to remain between the tracks, etc. I do not know just what that would mean.

Mr. HAWLEY. It means that when these obstructions occur and they do not remove them with expediency——

The CHAIRMAN. I understand what you are after.

Mr. HAWLEY. It means likewise, pardon me, Mr. Chairman, that these chains and rods that are connected with the automatic switches could be lowered, giving the switchman a smooth path. It means that in the winter time some effort should be made to remove the accumulation of snow and ice between the tracks, where the switchman must walk.

The CHAIRMAN. You speak of discarded material that lies between the tracks that you wish removed?

Mr. HAWLEY. Yes, sir.

The CHAIRMAN. And you say, "shall not remain there." That is just a technical point. I am not sure just what that would mean. It might be necessary to have a time limit, and yet I am not sure of that.

Mr. HAWLEY. It would be very easy to have provision made to cover that by having some person look out for those matters. In many cases they have men whose duty it is to go around the yard and pick up the obstructions that sometimes occur as the result of a night's work. They allow them to accumulate and we have to meet with those conditions in some cases.

**STATEMENT OF MR. D. A. HARSHBARGER, THIRD VICE-PRESIDENT, INTERNATIONAL SWITCHMEN'S UNION OF NORTH AMERICA, BUFFALO, N. Y.**

The CHAIRMAN. What is your connection with this matter?

Mr. HARSHBARGER. I am the third vice-president of the International Switchmen's Union of North America.

The CHAIRMAN. Where do you live?

Mr. HARSHBARGER. Buffalo, N. Y.

The CHAIRMAN. You may proceed.

Mr. HARSHBARGER. Mr. Chairman and gentlemen, the bill H. R. 16879, which aims to regulate in a measure the number of men that shall be employed on a switching train, is just, and one that should be put into force, in my estimation. I can not say too much in behalf of this bill. I recall a number of accidents as the result of a short crew, and I recall instances where switching engines are employed supposedly for the purpose of pushing trains on hills, etc., and when there are no trains to push the engine is used in breaking up trains and the ordinary work of a switching engine. In the New York Central and Jersey Shore yards they have, I believe, two engines with only one man upon each engine—that is, as a ground man—and their duty is to pull out the caboose and put it on the road and shove those trains to a certain point. I have been in the yard myself and seen that engine come back and there were none of the ordinary duties to be performed, and it would go in on a track and catch probably 16 or 17 cars and switch the cars to their proper tracks. The man would have to throw the switch in all instances, leaving the company to take care of the cars. There was no man in the field to catch it, resulting oftentimes in broken drawbars and in knocking coal off the cars and thus obstructing the passageway of the switchmen unnecessarily.

I have known of instances of braking, as it is commonly called, with two men on the cars coming to a signal that held them up, and perhaps it would be at a grade crossing, and maybe three or four crossings to cut in order to give traffic free passage. The two men would have to do that work. Possibly one man would have to brake the hind end. The additional man would have to cut crossings. After the crossings were cut and they were ready to proceed farther, the one man would start to couple up the crossings and would start here [indicating] at the first crossing, and the probabilities are that he would miss that coupling and the contact of the cars coming together would knock the coupled section on to the next crossing. Ordinarily there are switchmen, carmen, and gatemen at those places to prevent accidents, maybe there are not; but anyhow there is danger to the public in being caught as a result of a short crew there, and I know of one instance where death resulted from that occurrence.

Then, the Pennsylvania does considerable industrial work on the Buffalo Creek and none of the crews plying in that neighborhood has more than two men. A great many of the industries are, to say the least, hard to get at. The tracks are on curves and in a great many instances there are sheds and one man possibly stands out at the switch so as to protect the engine that may be using the same track. The other remaining man has got to go into that industry and do all the work himself, and a great deal of the work done is sim-

ply by guessing. They know how many cars the track will hold. They possibly have some of those tracks where the engine can not go in and they have to hold on to a sufficient number of cars in order to get the car back at the block where perhaps it is needed. In that event the one remaining man is back there at the block and he can not be seen by the engineer. The engineer will shove on very slowly until the car is up against the block, giving that man sufficient time, as he believes, to get down and make the cut, and then he pulls out slowly. It is all guesswork, and time and again there are instances where it was absolutely necessary for a third man. I recall having made an investigation at Erie, on the Lake Shore, where an engine was employed at a coal dock. It was working with two men and the lives of the men who worked around the coal tipple were in danger constantly as a result of the short crew, and the lives of the men who worked on the engine were constantly in jeopardy. However, I will say that I brought the matter to the attention of the Lake Shore officials and I believe they have since put an additional man on that crew. In the drag runs, where there are but two men and they do anything more than couple on to a train and deliver it to its destination, two men can not do the work satisfactorily.

The CHAIRMAN. What is a drag run?

Mr. HARSHBARGER. That is a delivery, a transfer. They have what they call delivery or transfer runs that deliver from one yard to another. That is all in the yard service. A great many roads employ only two men on those crews. Of course there are other roads that have the regular quota of men—three, and in some instances four.

I contend that the enactment of this bill is not only in the interest of the safety of the switchmen's lives and the protection of their limbs, but is as well to the interest, in my estimation, of the railroad companies themselves. Take a short crew in a switching train, there is no man to catch the cars that are being switched and as a consequence the company has to take care of or catch the cars itself. Considerable damage is done by those cars by coming into fierce contact with one another, and coal is knocked off. I have been in yards before now where between the tracks and in the middle of the tracks there were tons and tons of coal scattered here, there, and everywhere, as a result of the cars moving swiftly and coming up with the other cars on the track and stopping suddenly.

The CHAIRMAN. Tell us, if you will, what is the regular ordinary switching crew?

Mr. HARSHBARGER. Three men, a foreman and two helpers. That is the regular crew.

The CHAIRMAN. Of course, in addition to the engineer and fireman?

Mr. HARSHBARGER. Yes, sir.

The CHAIRMAN. What are they called; one is called the foreman?

Mr. HARSHBARGER. Yes, sir; and the other two helpers.

The CHAIRMAN. There is no designation between the two helpers?

Mr. HARSHBARGER. Yes; the pony man, the engine man, the man who follows the engine, and the field man.

The CHAIRMAN. One man is supposed to be with the engine?

Mr. HARSHBARGER. Yes, sir.

The CHAIRMAN. That is for the front of the engine?

Mr. HARSHBARGER. It all depends on which way the engine is working.

The CHAIRMAN. Yes; I understand. And the other man is supposed to be where?

Mr. HARSHBARGER. In the field, catching cars ordinarily.

The CHAIRMAN. What you want is a foreman and three men?

Mr. HARSHBARGER. No; the bill provides for a foreman and two helpers, nothing less than that.

The CHAIRMAN. You say that is the ordinary crew now?

Mr. HARSHBARGER. Yes, sir; that is the ordinary crew now.

Mr. CALDER. Most of the railroads have crews of that sort?

Mr. HARSHBARGER. Yes, sir; but there are a great many engines employed that have only two men, a foreman and helper. There are specific instances that I can recall where a man would be taken off, the crew would be reduced, and practically the same amount of work would be expected from the two men that was formerly done by three men.

The CHAIRMAN. You speak of the crew in the large city yards. How would this operate with the small switching yards in the country, some place where there was very little business to be transacted?

Mr. HARSHBARGER. Ordinarily that work is taken care of by the road crew. It is not the habit or the practice of the railroad companies to keep a switching engine in service anywhere unless there is sufficient work at that point to keep it going.

The CHAIRMAN. You know a great deal more than I do about that matter, but I had an impression——

Mr. HARSHBARGER. At some point along the line they have what are known as local trains. Those are in the road service that do this local work—set off cars and pick up cars. They do not usually have a switching engine employed at any place unless there is a sufficient amount of work at that point to keep it in action.

The CHAIRMAN. Would this bill apply to such an engine?

Mr. HARSHBARGER. It would not in any way affect road service.

The CHAIRMAN. Would not it apply to a road engine doing switching at a country point?

Mr. HARSHBARGER. That is not considered a switching engine.

The CHAIRMAN. But the term here is not "switching engine."

Mr. HAWLEY. May I ask a question to bring out the information?

The CHAIRMAN. Certainly. Information is what we want.

Mr. HAWLEY. The chairman wants to know whether in a small place where they work with a switching engine, is it possible, as a rule, to work with a foreman and less than two helpers?

Mr. HARSHBARGER. I would say that there should be three.

Mr. HAWLEY. Chiefly because of the industrial work?

Mr. HARSHBARGER. Yes, sir; and many other reasons. If an engine does the ordinary work of switching cars it should have its full complement of men.

The CHAIRMAN. For instance, where there is a Y and where a road engine does some switching around the Y, I am very sure they do not always use the full crew of the engine and train in doing that switching now.

Mr. HARSHBARGER. The Y's; that depends largely on the kind of work being done and the location of the Y. You take it in the road service and oftentimes they may do switching at an intersection or something of that kind. The road crew has the full complement—the flagman, the conductor, and the brakeman.

Mr. Chairman, there is something else that I would like to call your attention to. Oftentimes the officials become overanxious to reduce operating expenses and they will permit a certain number of engines in the yard to work shorthanded. I recall an instance in a certain yard where that loss had grown to an inexcusable number. The fact of the matter is one is an inexcusable number. It had grown little by little until eventually there were 24 engines working in that one yard shorthanded.

Mr. WANGER. Out of a total of how many?

Mr. HARSHBARGER. Possibly 45.

Mr. WANGER. More than half?

Mr. HARSHBARGER. There may have been 50 engines in that yard. The officials' attention was called to this time and time again, meetings of the employees were held, and they protested against working under those conditions. They got no relief and finally they held a meeting and resolved that after a specified time they would refuse to work with an engine which was shorthanded. Now, the excuse given by the officials of the yard for working the engines shorthanded was that there were no men to be employed, a scarcity of experienced switchmen or inexperienced switchmen.

Mr. ADAMSON. By "short-handed" you mean not a sufficient number?

Mr. HARSHBARGER. Yes, sir.

Mr. KNOWLAND. How many short were they?

Mr. HARSHBARGER. There are three men ordinarily on an engine, but it got so that eventually there were 24 engines in that yard working with but 2 men each, the foreman and helper. Mr. Chairman, the officials contended that they could not get competent men, that work was plentiful everywhere, that everybody was engaged, and that inexperienced men because of brilliant opportunities in other vocations had no desire to take up the switching service. However, when the employees got together and resolved that they would not work the engines short-handed after a specified time, from that time on the crews were filled up. They had no trouble in getting men from the time that that action was taken by the men. Now, that may have resulted in a tie-up of that yard or of that system, thereby delaying interstate commerce and causing the business men to lose thousands and thousands of dollars in trade, etc. To my mind a bill of this sort would overcome that.

Mr. ADAMSON. The bill you are talking about to-day would appear to relate entirely to conditions in local yards and not to actual runs from State to State?

Mr. HARSHBARGER. Oh, no.

Mr. ADAMSON. Will it bother you if I ask a few questions?

Mr. HARSHBARGER. Not at all; no, sir.

Mr. ADAMSON. For a number of years I have sat here and listened to appeals and statements to compel the railroad companies to do certain things which it would appear the common intelligence and the exercise of ordinary care and caution would prompt them to do without legislation. I would like to know from you if there are any special instances of neglect, or is there general lack of vigilance on the part of the railroad authorities to use such means as will protect life and limb in the operation of these engines and trains?

Mr. HARSHBARGER. You take the operating staff of the yard service, and they must hew right to the line of rigid economy. Things have become so systematized in railroad work that even a fraction of a cent counts something.

Mr. ADAMSON. Is not that small saving making a saving at the spigot and losing at the bung hole considering the lawsuits and damages they have to pay for accidents and injuries?

Mr. HARSHBARGER. One would naturally think so. I have often looked at it in that light myself, but it seems that they oftentimes take a chance and trust to Providence that the thing will go along all right, that there will be no accidents, in order to save the expense of the additional man.

Mr. ADAMSON. What is troubling my mind is this consideration. The railroad people are generally pretty smart fellows and you have heard them called everything but fools. They have intelligent men to operate the train service and they have the smartest lawyers in the country. These men employed by the railroads are responsible for their maintenance and have to pay the damages if they hurt anybody. It has always occurred to me that every consideration of self-interest would prompt them to take care of their property and the men who operate the property, and yet there are a great many demands upon us to make adequate provision in the way of safety devices. Is that neglect general on the part of the railroads or are there only special instances?

Mr. HAWLEY. While it is a rule of the carriers to equip their engines with the proper complement of men in time of congestion, is it not the rule in time of depression or when business is not heavy for them to reduce expenses by taking a man off each engine?

Mr. HARSHBARGER. Undoubtedly.

Mr. ADAMSON. Of course, it is clear that when there is not so much business there is less danger.

Mr. Hawley. We contend that is not true; that the dangers are still as great.

Mr. ADAMSON. With less business?

Mr. HAWLEY. Yes, sir; the danger to the individual.

Mr. ADAMSON. You mean to say they concluded that because there was a time of depression they could take off the men, but that they were mistaken?

Mr. HAWLEY. Certainly.

Mr. BARTLETT. This bill applies to the switching of passenger cars as well as freight cars?

Mr. HARSHBARGER. All engines employed in the switching service. Mr. Chairman, I want to correct a possible wrong impression and that is this: We do not object to the railroad companies reducing the number of crews during a depression of business, but we object to their reducing the number of men on the engine. If 3 men are required to make a full crew when business is good, in view of the fact that when business is bad, during the depression of business, they will cut down the force accordingly, still there should be 3 men in a crew.

Mr. SIMS. Do you object to stating what yard it was where there were 24 engines with 2 men instead of 3 men, the yard you referred to?

Mr. HARSHBARGER. I do not. It was the D. L. & W., the Delaware, Lackawanna and Western.

Mr. SIMS. At what place?

Mr. HARSHBARGER. Buffalo.

Mr. BARTLETT. Do you not think there should be some distinction made? This act, it seems to me, really would apply to any railroad engaged in interstate commerce. Should there not be some distinction made between the railroads that have a great deal of business and those that do a small amount of business?

Mr. HARSHBARGER. Not necessarily so.

Mr. BARTLETT. For instance, in my section of the country there are roads that probably would not require this number of men, because they only switch a few cars in the yards. According to this bill if there was only one car or two cars they would have to comply with this law. Now, to require those small roads that have but a few cars a day to have this complement of men would be unreasonable, as it looks to me. There should be some distinction between a road that has a large number of cars and one which has only a small amount of business, one or two cars coming in in a day, while other roads might have 30 or 40 or 50 cars, requiring switching.

Mr. HARSHBARGER. As I said before, ordinarily a railroad company does not employ a switching engine where they have no work for it, and in that event this work is done by the road crew. This bill does not affect the service of the road crews in any way.

The CHAIRMAN. Are you sure about that? The bill provides in section 2 that "any locomotive engine engaged in the switching of cars or in the making up or breaking up of trains," no matter whether it is a switching engine or not a switching engine or whether it is a road engine out on the road some place, this bill provides that while it is so engaged the foreman and helpers shall not perform any other duties whatever.

Mr. BARTLETT. This means that it is necessary, in every instance, to have a foreman, two helpers, an engineer, and fireman?

Mr. HARSHBARGER. Yes, sir.

Mr. BARTLETT. The foreman of the yard; does that include both the night and day foremen, they have two generally? I am somewhat acquainted with the business in my city. They have two, night and day foremen, and they superintend this business. Is it intended to take away from the railroads the right to designate the kind of official or employee to whom they may commit this duty?

Mr. HARSHBARGER. No. I believe you have reference to what we call general yardmaster.

Mr. BARTLETT. Those who are there at all times of the day and night.

Mr. HARSHBARGER. They are yardmasters. This bill does not aim to make any change in that.

Mr. SIMS. This bill provides in section 4 that they shall not be engaged in any other duty while actually engaged in the business of switching cars.

Mr. BARTLETT. It says that they will not be required or permitted.

Mr. SIMS. While actually engaged in switching cars. It does not prevent them from doing anything else at another time.

The CHAIRMAN. You may proceed.

Mr. BARTLETT. May I continue for just a moment?

The CHAIRMAN. Certainly.

Mr. BARTLETT. As I understand, they must have someone to give the signals and someone to couple up. According to your statement, there would be a yardmaster, and then in addition to that there would be the foreman, two helpers, the engineer, and firemen?

Mr. HARSHBARGER. Yes, sir.

Mr. BARTLETT. Do you not think that would be a burden upon a small road that does not do an extensive interstate-commerce business, simply one or two cars a day? For instance, there is a car which comes into the city and there is a branch road that has to take that car and switch it onto its line from the other line; must all these men be employed in that particular transaction?

Mr. HARSHBARGER. I do not consider it as being a burden. There are often times, I may say, when there is not a sufficient amount of work to warrant the employment of a yardmaster, and the foreman of the engine looks after that part of the business.

Mr. BARTLETT. You take a siding at a station; this bill does not exempt that even. You take a car that is going to load or unload, left on a siding at a station; here comes along a crew at a small station with a brakeman, fireman, engineer, and conductor of a freight train; do you want, at each station where that occurs, these men? Is this confined absolutely to the yard? It does not seem to be so. It would seem to embrace every small station along the line where they have to switch cars.

Mr. HARSHBARGER. The intent of the bill is to embrace only the places where they do regular switching. Of course, at these small points which you speak of they have local trains to do that work, to set off the cars and to pick up the cars.

Mr. BARTLETT. Between Lynchburg and Danville there is a place called Franklin Junction, I believe; they have probably a switching engine and they do a great deal of business. That is a small station.

Mr. HAWLEY. Simply because there are shops; they would be required to have three men?

Mr. HARSHBARGER. Undoubtedly.

Mr. HAWLEY. You frequently find that in small places, such as you refer to, the yardmaster performs the duty of foreman and yardmaster?

Mr. HARSHBARGER. Undoubtedly.

Mr. HAWLEY. And a great deal of the time he is away from the engine, thus making the work shorthanded?

Mr. HARSHBARGER. Yes, sir.

Mr. BARTLETT. Have you estimated how many additional men this bill would require the railroads to employ?

Mr. HARSHBARGER. I have not.

Mr. SIMS. If I understand your position it is that wherever a switching engine is required it must be equipped as provided in this bill?

Mr. HARSHBARGER. Yes, sir.

Mr. SIMS. And in case of a loss of business to the road so that there might not be so many switching engines required they must drop out the engine with a whole crew instead of decreasing the crew?

Mr. HARSHBARGER. Yes, sir.

Mr. SIMS. And the bill does not apply to any place where switching is done otherwise than by what is termed the regular switching engine?

Mr. HARSHBARGER. No, sir.



Mr. BARTLETT. What do you mean by "standard-gauge locomotive engines" in line 2, page 2?

Mr. HARSHBARGER. The standard gauge of the carrier. The Pennsylvania and all the railroads running in here are standard gauge.

Mr. BARTLETT. What do you mean by "standard-gauge locomotive engines?"

Mr. HARSHBARGER. That is just a technical term, I believe, used by railroad men. They are commonly known and referred to as standard-gauge engines.

Mr. BARTLETT. That refers to the width of the track?

Mr. HARSHBARGER. Yes, sir.

Mr. ADAMSON. Your idea is that if they have 30 engines and 90 men they should economize by cutting off 30 men and having 20 engines with 60 men to do the work?

Mr. HARSHBARGER. That is the idea.

Mr. ADAMSON. Could they do the work better with 20 engines and 60 men or with 30 engines and 60 men?

Mr. HARSHBARGER. On all switching engines there are employed an engineer and a fireman.

Mr. ADAMSON. I understand. Twenty engines with 60 men can not do the work of 30 engines with 90 men, but your proposition is to have 20 engines with 60 men rather than 30 engines with 60 men?

Mr. HARSHBARGER. Yes, sir. I may say in that connection that all engines have an engineer and fireman. If there is not a sufficient number of men employed upon the engine to keep it moving, to take care of the cars, the engine will lie idle a considerable part of the time, five minutes now, five minutes a little later, and so on, but by having the full complement of men on the engine they can keep it going. The engineer is a high-salaried man and the fireman receives only an ordinary salary, so I can not see where the railroads themselves would be gaining anything by having 30 engines and 60 men as against 20 engines and 60 men.

Mr. ADAMSON. The third man would be the cheapest man?

Mr. HARSHBARGER. In my estimation, that is true, and is borne out by the fact that they usually have a complement of three men on the engine.

The CHAIRMAN. Were you going to discuss the bill (H. R. 16880) also?

Mr. HARSHBARGER. The bill (H. R. 16880) would compel the railroad companies to provide all their switching engines with footboards and headlights on each end. Mr. Hawley spoke of that at some little length, and I am not going to take up a great deal of your time.

The CHAIRMAN. I would like to ask with reference to both this bill and the previous bill, whatever language may be used in the bills, what you seek is only to affect engines and crews engaged in switching yards?

Mr. HARSHBARGER. Yes, sir; that is the idea.

The CHAIRMAN. None of the bills would seem to go further than that.

Mr. HARSHBARGER. I do not care to take up any of your time in connection with this bill inasmuch as you have explained that by arrangement with the Interstate Commerce Commission that particular matter is going to be taken care of. We were up at the Interstate Commerce Commission yesterday and I believe there was something said about it there. We saw one of the inspectors and he

explained the thing pretty thoroughly. So I will just pass over to bill H. R. 16881.

Mr. SIMS. Could not all the matters of legislation mentioned in these three bills be combined in one bill, if the committee should deem proper to enact any of them?

Mr. HARSHBARGER. No, sir.

Mr. SIMS. Do they not all apply to switching and switching engines?

Mr. HARSHBARGER. Yes, sir; they all do.

Mr. SIMS. And nothing else?

Mr. HARSHBARGER. No, sir.

Mr. ADAMSON. In so far as we have authority to deal with them, could not all these matters practically and efficiently be left to the control of the Interstate Commerce Commission?

Mr. HARSHBARGER. Not if there is no law.

Mr. ADAMSON. Could we not enact a law and leave it with them?

Mr. HARSHBARGER. If there is a law giving them the authority to regulate these things.

Mr. ADAMSON. Do you not think that would be satisfactory?

Mr. HARSHBARGER. That is what we are aiming to do, trying to get the enactment of a law which will give them the power to act.

The CHAIRMAN. You may proceed.

Mr. HARSHBARGER. The bill, H. R. 16881, is a bill to promote the safety of employees on railroads by requiring tracks in yards to be kept free from obstructions. This is a bill that is absolutely necessary for the protection of the life and limb of the men engaged in that work. It is bad enough to work under these conditions of affairs in daylight, but switching is not all performed by the light of the sun. As you are well aware, they have more switching engines employed in the night service than they have in the day service, and where there are drawbars, lumps of coal, and in many instances ties, sides of cars, and every manner of thing lying between the tracks or in the path of the switchmen's travel, it is very dangerous. There is no reason why those things ought not to be taken out of the way, thus giving the switchman free passage in his path of duty, getting on cars constantly and off of cars constantly while they are in motion. A man gets off a car and he unexpectedly steps upon a large lump of coal and it rolls with him; he is in motion at the time himself, and he is liable to fall, and if he does not get killed he is liable to lose a hand or a foot. Oftentimes the automatic couplers do not work, the locks, etc., and it is necessary for a man to go between the cars and pull out the knuckle pin in order to uncouple the cars. He is walking around there with one hand on the grab iron and the other on the knuckle pin and he has no way of looking at his feet to watch his travel. He comes along and stubs his toe on a piece of coal or something of that kind and he falls and the cars run over him and maim him for life or kill him outright. I say for the protection of those men as well as for the quick dispatch of the work that all obstructions of that kind should be removed from the yard. Understand, where yards are dirty there are ties and one thing and another of that nature lying between the tracks here and there and men naturally work a little slower and more cautiously, whereas if the yard was clean, etc., they would get along much faster. So I contend that even in that bill there is nothing that is detrimental to the companies; rather is it to their benefit.

Mr. HAWLEY. You made a mistake. You said that when he was switching he was walking along; you meant running along?

Mr. HARSHBARGER. Yes, sir. Ordinarily those cars move 7 or 8 miles an hour, and he has to run a little in order to keep up.

Mr. KNOWLAND. You spoke of a man stumbling over a piece of coal at night. There might be coal cars run through the yard and pieces of coal fall off and it would be impossible for them to have the coal picked up before the switching engine or the car might come along, and men might, perhaps, stumble over the pieces of coal, and under this bill the company would be just as liable as if the coal had been there a week?

Mr. HARSHBARGER. I believe they should be. I think when a man gets injured or killed in the service of a common carrier he should be protected in some way, or his family should be protected. You send a man to war and if he gets shot or injured the Government pensions him, provides for him in some way, and I want to assure you that switching cars is pretty nearly as dangerous as going to war.

Mr. ADAMSON. Referring to the suggestion of Mr. Knowland about the coal falling off the cars, is there not practical danger from overloading those cars—that the coal falls off and endangers life and causes accidents?

Mr. HARSHBARGER. Yes, sir; very often. It is liable to do so at any time.

Mr. ADAMSON. What I had reference to was that the coal tumbled off the cars while running, they being loaded too much?

Mr. HARSHBARGER. Possibly. I do not have personal knowledge of an instance of that kind.

Mr. KNOWLAND. You say that certain things which you have noted are bad obstructions and you want the railroad companies to remove those obstructions?

Mr. HARSHBARGER. Yes, sir.

Mr. HAWLEY. It is not intended by this law that a man shall stand there in anticipation of something falling from a moving car, but it is to take care of the accumulation?

Mr. HARSHBARGER. Yes, sir. The intent of the law is to keep the yards in a reasonable condition. Now, oftentimes they are fixing the tracks and they take ties in the yard to replace some old worn-out ties, and before the day is over, the day's work done, or the job completed night overtakes them and they go home, and the following morning they have to go and work somewhere else, perhaps, along the line, and those ties have not as yet been put in, or possibly they have been put in, but the old ties are left there. I have known of instances where ties were allowed to remain between the tracks for a month or two months. I know one tie particularly that I walked over for a good many weeks, I should say two and one-half months anyhow, and there was no legitimate or reasonable excuse for that tie being left there for that length of time.

Mr. KNOWLAND. In regard to the signal rods or switch rods, what could they do? Would it be possible to remove those?

Mr. HARSHBARGER. In switching cars, as has been explained by Mr. Hawley, you have to run along the car or get hold of the iron and hold on to it, but it is not necessary to hold the coupling lever up until the cars have parted. Where the switching stand is too close

to the track or where it interferes with the passage of the switchman in the pursuit of his duties it endangers his life and limb.

Mr. KNOWLAND. Where would you have it put?

Mr. HARSHBARGER. Lower. In many instances that I have seen the switch stands were up within possibly 8 inches or 10 inches of the car and they could have been put back possibly a foot.

Mr. KNOWLAND. They could be put down in the ground and they would not form any obstruction at all?

Mr. HARSHBARGER. They could be made low enough for the switchman to get over if he could not get around them.

The CHAIRMAN. Is that done in any of the yards?

Mr. HARSHBARGER. Yes, sir. They have a good many ball switches and there is no obstruction.

Mr. KNOWLAND. A man could not stumble over those?

Mr. HARSHBARGER. He could, of course.

Mr. BARTLETT. Is it not the general rule of almost all railroads to prohibit brakemen or others from going in between the cars while in motion?

Mr. HARSHBARGER. Yes, sir; there is a rule, but if the men took cognizance of that rule, if they lived up to it, there would be occasion for the employment of a great many more switchmen than they have now, and people would not get their goods as quickly.

Mr. BARTLETT. Do they enforce that rule against every brakeman who goes between the cars?

Mr. HARSHBARGER. The men constantly violate it with their knowledge. I only know of one instance where a man was suspended for its violation. The fact of the matter is——

Mr. BARTLETT. Nobody pays any attention to the rule of using a coupling stick?

Mr. HARSHBARGER. That was a long time ago.

The CHAIRMAN. Mr. Hawley, you have one other witness?

Mr. HAWLEY. Yes, sir. The other witness is not now a railroad man, but he was for a great many years.

Mr. SIMS. Several times you have referred to the fact that, in your judgment, it would not be a burden upon the railroads to equip their engines as this legislation requires. Would it make any difference to you as to whether or not it was a burden if you thought the legislation was necessary and would save human life?

Mr. HARSHBARGER. No, sir; I would not take into consideration the small cost or burden incident to the enactment of the law.

Mr. SIMS. I notice that you referred to that several times?

Mr. HARSHBARGER. Yes, sir.

Mr. SIMS. Would not this expense be in the nature of an operating expense?

Mr. HARSHBARGER. Yes, sir.

Mr. SIMS. And would not the people who pay for the freight and passenger traffic after all pay it?

Mr. HARSHBARGER. Yes, sir.

Mr. SIMS. It really would not be any burden to the railroad companies, then?

Mr. HARSHBARGER. No, sir.

I believe, Mr. Chairman, I am through, unless there are questions to be asked.

STATEMENT OF MR. WILLIAM CHARLES HUBBARD, NIAGARA  
FALLS, N. Y.

The CHAIRMAN. You may proceed.

Mr. HUBBARD. In support of the bill with reference to obstructions along the tracks, Mr. Chairman, I wish to show the gentlemen here assembled what my injury consists of, the loss of my hand [exhibiting]. I will state now that obstructions between the tracks caused this injury. I only had one helper. That was all that was employed in this yard, and I had to get along with that man at all times and under all conditions.

Mr. WANGER. You were a foreman?

Mr. HUBBARD. A conductor. At the time of my injury I gave the signal to my engine—I was standing on the top of my train, backing into the yard, following another train that had just pulled into the yard. I had to back in on account of a train pulling in on the same track, and when I saw the cars in the shadow—it was about 5 o'clock in the morning—I gave a signal to stop. Of course, I had my eyes on the cars ahead of me. This did not take the slack out of the train and I looked around to see if the signal was answered. I got off the car and I stepped on an old brakeshoe that was lying on its edge and that caused me to stumble. The next step I took, I stepped on a clinker, spraining my ankle by turning it over, throwing me under the cars. My breast struck the rail and I was lying on my head and shoulders. The cars were not moving very fast—I do not think the cars were moving over 4 or 5 miles an hour, and that gave me sufficient time to get my head and shoulders off the rail, but I grabbed the rail with my hand trying to protect myself, my fingers came over the rail on the inside and my thumb on the outside and the car ran over my hand crushing all my fingers and necessitating amputation.

Mr. RICHARDSON. Did you bring suit against the company?

Mr. HUBBARD. I did not.

Mr. RICHARDSON. Why not?

Mr. HUBBARD. I employed a lawyer and the case was settled before it came to court.

Mr. RICHARDSON. They settled with you?

Mr. HUBBARD. Yes, sir. In all the yards, I think, it is customary to leave all parts of the cars that are removed. It is the negligence of the employees. The foremen that are engaged do not compel the men to remove the obstructions, and they lie there for months and months. I have even seen the yardmaster fall over the obstructions. I have seen the car checkers and other employees fall. In some cases I have known of them being injured, an arm or leg cut off, or possibly killed. I have been in the service since 1876. I have worked on a great many different roads. I was employed for twelve years by the New York Central, and my observation while employed by that company in the various yards at Niagara Falls—I know it to be a positive fact—that the yards were not cleaned more than semi-annually, possibly in June and along late in the fall. The obstructions that would accumulate for months and months were allowed to lay there—drawbars, timbers, car doors, brake shoes—any old thing.

Mr. RICHARDSON. Do not the ash piles accumulate also?

Mr. HUBBARD. No, sir; they are not allowed to keep ashes in the yard, but they do occasionally. Of course, as a general thing the ashes are between the rails, and of course that makes it very dangerous for men handling the cars.

Mr. RICHARDSON. I saw a bill somewhere, I do not know whether it was introduced by our chairman or not, to compel them to remove the ash piles.

Mr. HUBBARD. They are supposed to remove all obstructions, but they do not do it. I believe that is the intention of this bill.

Mr. WANGER. Who is expected to remove the obstructions?

Mr. HUBBARD. The company is supposed to have section men, yard men, men that repair the tracks generally, to remove the obstructions. They should go around at least once a day and remove all those obstructions, so that the men working at night will not stumble and fall and endanger their lives and limbs, but they do not do that. Here is a case that I know of at this particular point where I was injured. They inspect the trains that are delivered there. A train came via the Michigan Central and was delivered to the New York Central. I took the interstate-commerce merchandise and delivered it from the New York Central to the Lehigh Valley. When I reached the cars on the tracks they would send an inspector out to inspect them and if there were any repairs to be made they would make them. Now, if it was necessary to put on a brakeshoe they would go up and get a shoe and put it on, and when they took the old shoe off instead of taking that brakeshoe back with them the same as they brought the new one they would leave it lay there. That is negligence.

Mr. WANGER. Is there any penalty in this bill for such negligence?

Mr. HUBBARD. Five hundred dollars is all.

Mr. WANGER. You would not impose a penalty of \$500 on a man who had failed to remove a brakeshoe?

Mr. HAWLEY. It is imposed on the carrier.

Mr. MILLER. Whose duty is it to report to the company any negligence of that kind?

Mr. HUBBARD. The yardmaster or the conductor. I have reported drawbars and obstructions laying between the tracks time and time again and have asked the men to remove them, but they would lay there for months.

Mr. MILLER. To whom did you make the report?

Mr. HUBBARD. The foreman of repairs and he makes it to the yardmaster. The yardmaster is probably the official to whom this report should be made. It is his place to report the matter to the yard foreman, the man who has charge of making the repairs on the track.

Mr. RICHARDSON. And you attribute your injury to the obstruction which was laying there?

Mr. HUBBARD. Yes, sir.

Mr. RICHARDSON. What was the size of the obstruction that caused your injury?

Mr. HUBBARD. A brake shoe is about 5 inches in length, about 2½ inches in thickness, and about 4 inches in width. A brake shoe is made in a semicircle, so as to fit up against the wheel.

Mr. RICHARDSON. It was just left there as refuse matter?

Mr. HUBBARD. Yes, sir. It was an old brake shoe which had been taken off.

Mr. RICHARDSON. You think that all this scrap iron should be gathered up every day?

Mr. HUBBARD. Every morning.

Mr. RICHARDSON. And put where?

Mr. HUBBARD. In the scrap pile.

Mr. RICHARDSON. Where it can be taken away?

Mr. HUBBARD. Yes, sir.

Mr. HAWLEY. A switchman in performing his duties must travel immediately outside the rail?

Mr. HUBBARD. Yes, sir; at all times.

Mr. HAWLEY. Is there any regulation about the old brake shoes?

Mr. HUBBARD. They lay them down along the rail and leave them lie until such time as they need them. If they have to put on a new brake shoe, they will go over and get the new brake shoe and leave the old one lie alongside of the rail.

Mr. RICHARDSON. You know a great deal about agriculture; about farming. Farmers are universally careless about leaving all of their working implements in the field when they get through, and the railroads do the same thing.

Mr. HUBBARD. I do not see how an individual could be killed by leaving a hay rack out in the field.

In reference to men working shorthanded in the yards, I wish to say that while employed by the New York Central I was never allowed but one man. I had to take the cars from one yard to another. I had to deliver my freight to the Grand Trunk across the steel bridge into Canada. There would be 40 or 50 cars in a train. We had three tracks—one for 40 cars, one for 45 cars, and the other for 50 cars. When backing into the yard, many times my man would be out of sight. There was a coal shed halfway up the track, and the smoke from the engine going around that coal shed would obstruct the view so that I could not see my man as he went back to the hind end and gave me the signal. My man would give me the signal from the top of the car, and I would back up slowly until I felt the cars strike, the jar, and then wait for the signal.

Mr. RICHARDSON. In what year was that?

Mr. HUBBARD. Previous to 1908. I was injured on November 14 of that year.

Mr. RICHARDSON. There has been a great deal of improvement in railroad transportation since that time?

Mr. HUBBARD. I do not think so in this case. Now, in the case of smoke and fog many times it is impossible to see over two or three car lengths. I would have to get up and go back to find out and take the slack out of the cars before my man went back, and I would have to walk about 50 car lengths or nearly so to find out if I had all the cars. Then I would walk the whole distance back to the engine and give the signal to go ahead. I would go ahead not knowing whether any of the cars were derailed and taking a chance that they were all coupled and I would pull around the bend. I have gone quite a distance with 10 or 15 cars off the track and the only thing that stopped me was the telephone. They would telephone down to the tower and flag me. I could not see a signal and I did not know that I had cars off the track. Of course, we were pulling on a bridge out of the New York Central yard and you would not feel it. The only thing that stopped me was the telephone. If I had had another

man back in the middle of the train and a man at the rear end, he could have signaled to me and we could have stopped. Pulling into the Grand Trunk yard, I would find that I had 50 cars and they would give me a 40-car track. On my arrival at the top, pulling up grade, we would stop and whistle for the switch because my engineer knew that I had a 40-car track and had 50 cars, and in some instances the switch tender was at supper and I would have to get down off the train run ahead and throw the switch, get back on the cars and when I got a signal from the hind end then I would have to get down and make the cut, go back on top of the cars and give a signal to go ahead and pull over the switch. Then the engineer would shift back until he was satisfied he had the slack and when I gave him the signal he would go ahead.

The CHAIRMAN. Mr. Hawley, have you any more witnesses?

Mr. HAWLEY. No, sir.

Mr. FAULKNER. We have six witnesses, two on each bill.

(Thereupon the committee took a recess until 2 o'clock p. m.)























